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024
No. 2795

United States
Circuit Court of Appeals

For the Ninth Circuit.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

Transcript of Record.

VOLUME III.

(Pages 801 to 1216, Inclusive.)

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

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(Testimony of Al. Black.)

Q. Did you see any of his men working down the creek on the right-hand side of the creek as you go up except those you saw at the tunnel?

A. I didn't; I couldn't see them over there, anyway.

Q. Why? A. There is a bluff there.

Q. And that shuts off your view? [718—568]

A. Yes.

Q. Now, when you were up there on the hillside where you could see Kinzie's people, what time of day did you say that was? A. The forenoon.

Q. Were you over in the afternoon, too, and saw Kinzie's people working down in the bed of the creek?

A. I think they were run off in the forenoon and they went back down to work on the grade, and they went down and got me arrested, and then what was done after that, I don't know.

Q. What was the work they were doing in the creek up there around the Lotta Claim when you saw them—were they blasting rock or building flumes, or what were they doing, Al?

A. One man was drilling a boulder—there was a big boulder and I think they wanted to get that out of the road, or something, they were drilling that; well, there was some men on the other side of the creek taking down some poles, and I think there was one man, one or two men on the flume.

Q. Did you see them at any time during that day doing any work on a box or piece of flume there at this place? A. I did.

(Testimony of Al. Black.)

Q. Did you see them try to do anything with that box during that day?

A. They tried to put it in the creek.

Q. In Gold Creek? A. Yes.

Q. Now, you know where they have constructed a dam down the creek—I mean the dam that was in there at the time Judge Cushman tried that Basin case. I will ask you with respect to that dam where was it that Kinzie's people were trying to get this piece of flume in Gold Creek—was it above the dam that they afterwards constructed there or below it?

A. I don't know where the dam was when Judge Cushman tried the case. [719—569]

Q. When did you see the dam that they afterwards constructed? A. Last Sunday.

Q. So that last Sunday was the first time that you were down there to see the dam?

A. Yes, that is the first time I was down to the dam.

Q. Now, what would you say with respect to the dam as it is now and as you saw it last Sunday, as to whether these people were trying to put their piece of flume in the creek above that point or below that point?

A. It was above where the dam is now.

Q. What time did you quit work on that day of the 3d of October, 1910?

A. When the marshal came up there.

Q. Do you remember approximately what time you were arrested that day?

A. It was along in the afternoon, sometime.

(Testimony of Al. Black.)

Q. Then you didn't go back on the 3d, and when was the next time that you remember that you were down to where you saw them trying to put that piece of flume in' on the 3d?

A. The next time was last Sunday.

Q. Haven't been back to that place since last Sunday? A. Not on the ground since.

Q. You remained in the service of Mr. Mackay and were working where, on the flume line?

A. I worked with the carpenters; I didn't have nothing to do after I was arrested, I had to keep the peace.

Q. You mean you worked with the carpenters that were doing what? A. Building the flume.

Q. You were working on the high-line flume of the Ebner Company or the new flume line?

A. Yes, I was away a while down to Ketchikan, and after I got through there I went to work with the carpenters.

Q. Now, Mr. Black, do you know whether or not the flume that [720—570] was built, the high-line flume of the Ebner Company where it enters the dam, the Ebner dam at the intake, whether it sits on top of the ground or whether it is sunk down in a ditch or excavation?

A. It is excavated down there.

Q. Who did that excavating at that point?

A. I worked on it some, and I think Ed. Sykes, and John Carlson was there, and I don't know who the other fellows were.

Q. What I am trying to get at is, about what time

(Testimony of Al. Black.)

did you make that excavation there at the dam?

A. That was just after he sent the men up.

Q. Was it before October 3d, 1910?

A. It was in September.

Q. In September, 1910?

A. Yes, about the middle, I guess; between the middle and the 20th; between the 15th and the 20th, somewhere along in there—might have been the 22d.

Q. You heard some of Mr. Mackay's testimony this morning? A. I did.

Q. I will ask you, Mr. Black, if you ever assisted Mr. Mackay in making a temporary headgate there at the dam of the Ebner Company?

A. Yes, we did; after we fed it through we laid some rocks across that way (indicating) so that the high water would not wash it out; we laid some rock down and then we put a couple of boards in the creek and filled it with dirt.

Q. Was there ever any opening cut there in the dam? A. Yes.

Q. About what time was that opening cut out—was it before October 3d, 1910?

A. Yes, it was two or three days after he sent up the first two or three men that came up there.
[721—571]

Q. In what month, Mr. Black? A. September.

Q. September, 1910? A. Yes.

Q. Now, I will ask you if there was any water run out through this cut in the dam into this excavation that you had made there for a flume?

A. There was.

(Testimony of Al. Black.)

Q. Was the water running through that prior to October 3d, 1910?

A. Yes, there was no flume in there, running just through the ground.

Q. Through the excavation? A. Yes.

Q. Do you remember, Mr. Black, when the first box or piece of flume was put in at that place—did you have anything to do with it—who did that, do you know?

A. I don't know whether Mackay—I think they put in some boards there.

Q. You were not up there on the 4th of October?

A. No.

Q. So you don't know anything about the putting in of those boxes that were put in? A. No.

Judge WINN.—I think that is all, your Honor, with this witness.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Al, you went up there about the 11th of August to go to work?

A. I think it was the 11th.

Q. At that time you started to work?

Judge WINN.—Just a minute, there is a question I would like to ask.

Q. (By Judge WINN.)—Do you remember, Mr. Black, about a tent being [722—572] pitched up there somewhere in the neighborhood of the Ebner dam? A. Yes.

Q. Was that about the day you were arrested or after you were arrested?

(Testimony of Al. Black.)

A. Before I was arrested, on that same day, but it was put up—I didn't see it until the afternoon.

Q. That was put up on the same day that you were arrested? A. Yes, sir.

Q. Now, you are pretty well acquainted with the grade over there where the tent was pitched, are you not? A. Yes.

Q. I will ask you where was that tent pitched with reference to the grade?

A. Right in there; it was kind of flat and it was put right in there where he had brushed out for the flume.

Q. Now, do you remember at that time, fixing that as the day, about how much of the flume line was cleared out or graded?

A. We were grading across the road; some of the men were working around by that bridge just beyond the cabin, the Ebner cabin.

Q. How far was it cleared off or graded in the direction of down creek from the Ebner dam; approximately how far down?

A. Oh, I guess about a thousand feet,—maybe more, maybe a little less, I never measured it there.
(Questions by Mr. HELLENTHAL.)

Q. Now, between that point and the Ebner dam the ground is level, isn't it—pretty level?

A. Well, it is practically level, only for the flume grade you know, you had to knock off some humps.

Q. But there was no real grade between the tent and the dam, was there?

A. Yes, there is a little grade there, it isn't much;

(Testimony of Al. Black.)

it went from nothing up to a foot and a half, some places a little more. [723—573]

Q. But, as a whole, there was no grading necessary in that neighborhood?

A. Oh, yes; they had to have a grade.

Q. I know, but what I mean is the ground was so level you didn't have to build a grade there?

A. Right where the tent was?

Q. In the neighborhood.

A. He set it right at the edge of the grade; if he had set it where the grade stops he would have set it in the mud.

Q. That is the only place in the neighborhood he could put it up?

A. There is a flat there; he could put it anywhere.

Q. Pretty wet in some places, isn't it?

A. If he put it right in the bed of the creek it would be wet?

Q. Anyway, you went up there about the 11th of August, and shortly after you went there you started to do a little digging in the neighborhood of the old Ebner dam? A. Yes, sir.

Q. Now, the flume of the old Ebner dam fits right up against the face of the dam? A. Yes.

Q. It takes the water right through the dam?

A. Yes, right through the dam.

Q. The dam extends across the creek—quite a large dam—comparatively large for dams in this country? A. No, not very high.

Q. I am talking about the dam, not about the flume at all; the dam is quite a long dam, and extends

(Testimony of Al. Black.)

clear across the creek, which is quite wide.

A. Yes.

Q. And the dam extends clear across the creek?

A. Yes.

Q. And then the flume fits right up against the face of the dam [724—574] and the water runs right into the flume?

A. There is a gate there the same as any place.

Q. What I want to get at, Mr. Black, is this—that the flume sits up against the face of the dam and doesn't take the water above the dam—fits right up against the face of the dam; that is right?

A. The flume goes right through the dam.

Q. Right through the dam?

A. Then at the end of it the water runs in.

The COURT.—Is the top of the flume any higher than the top of the dam? A. I couldn't say.

Q. They would be about the same, wouldn't they?

A. They might be the same; I never noticed.

Q. But, anyhow, it runs right through the flume?

A. Yes.

Q. The cut which has been made through which the flume is put, that was made by you gentlemen sometime in September? A. Yes.

Q. The cut that you made there was simply a cut in the dam?

A. The logs were cut out and the dirt cleared away.

Q. There was some dirt that had washed behind the logs you cut out? A. There was gravel.

Q. And you cleaned that away? A. Yes.

(Testimony of Al. Black.)

Q. There had been some gravel washed in there and you cleaned that away, shoveled out the gravel behind the dam, cut the logs, shoveled out the gravel that had washed over the dam and laid on the other side, and that is the cut you made?

A. Yes, sir.

Q. And the water ran on through that cut?

A. Yes. [725—575]

Q. Ran right along the creek bank as though there had been no dam there?

A. I don't know what you mean.

Q. If there had been no dam there the water would run right along; you just simply cut the hole in the dam so the water could run through the dam?

A. If we hadn't cut the hole the water would have flowed over.

Q. If you hadn't cut the hole the water would have gone over the dam, is that right? A. Certainly.

Q. After you cut the hole the water went through the dam instead of going over the dam?

A. Not all of it, just what they wanted to use; they had some logs—some boards or logs that were cut out of the upper dam that they put in there.

Q. And you put those back in so as to stop the flow of the water? A. Yes.

Q. And before you put those in, the water would run through the dam? A. Certainly.

Q. Instead of running over the dam?

A. Oh, we dammed it up.

Q. You afterwards dammed it up?

A. No, as soon as I had it so that it wouldn't wash

(Testimony of Al. Black.)

out the grade on the other side, just dammed it up so a little water could get out.

Q. Dammed it up so the water couldn't get through it?

A. Some seeped through it and some flowed over it.

Q. But you kept the flow of the creek from going through it?

A. Most of it, because if it had done that it would have washed out the grade.

Q. It would have washed out the other side, and to prevent that [726—576] washing out you dammed up the hole with logs and such other stuff as was handy to keep the water from getting through?

A. Mr. Mackay had some boards and things on the side; I don't know just how it was; I didn't look at the time, I was down on the grade, farther down.

Q. After you put your logs in, he still put some more boards in there to make the headgate, as it were, a little better? A. Yes.

Q. That was to make it tighter.

A. Yes; the next day after we cut it through he got a couple of boards put there.

Q. Then he went up and made the hole a little tighter so the water wouldn't get through?

A. I think he put a couple of boards on the side.

Q. That was the object of putting the temporary headgate in, to keep the water from going through?

A. Something like that.

Q. Now, that was the extent of the work done at that point at that time, wasn't it; it wasn't until

(Testimony of Al. Black.)

quite a long time afterward that you put boxes in?

A. I wasn't there when they put the boxes in, and I don't know when they put them in.

Q. They were not put in until sometime afterward?

A. They were put in while we were arrested.

Q. That was in October. Now, on the 3d of October you were down on the Lotta claim?

A. Yes, sir.

Q. And were trying to prevent the fellows that went up there to put in the dam from putting the dam in? A. Yes; that is what we done.

Q. And rolled rocks down, and blasted rocks down to keep them from working at the dam? [727—577] A. Yes.

Q. And that is what you were arrested for, isn't it? A. Yes—I don't know—

Q. That is what the jury found you guilty of, isn't it? A. Found guilty of simple assault.

Q. But that was in connection with that rock rolling down the hill? A. Yes.

Q. And you say you prevented Kinzie's men, or the Alaska-Juneau Company's men from putting in any dam on the morning of October 3d? A. Yes.

Q. Drove them out of there? A. Yes.

Q. Now, at that time there was one man trying to drill a hole in the rock, and you say others were taking down poles? A. Yes.

Q. You knew what the poles were going down there for, didn't you—to put in the dam?

(Testimony of Al. Black.)

A. Yes.

Q. That was the object of it?

A. I guess so.

Q. They were building a flume-box a little ways up the creek?

A. I think they built the box on the old high flume and took it down—now, I wouldn't say for sure.

Q. You wouldn't say for sure?

A. I know that they had it in the creek or in the road and took it down to the creek.

Q. About three o'clock in the afternoon you left there?

A. It was sometime in the afternoon.

Q. Now, sometime before you left they had taken that box and fastened it with a rope?

A. Yes, sir. [728—578]

Q. Getting it ready to float further down?

A. I don't know the object of it.

Q. They hadn't put the box in the creek and turned the water through it—it was simply that they had it fastened, and fastened with ropes?

A. We told them to look out, that we was going to roll some rocks down and they had to get out of there, and a rock came down and hit it.

Q. Before you left there they had it tied a little above the place where they afterwards put the dam in, didn't they, on the bank of the creek or in the creek?

A. When I left there it was all broken to pieces.

Q. They had to build another new one?

A. I don't know if they put in any other one or not.

(Testimony of Al. Black.)

Q. You don't know where the poles were put in afterwards?

A. I know now, didn't know then. They had two poles on the bank, stretched across on to a boulder as a bridge or something; the box was above that.

Q. The box was quite a ways above that?

A. 8 or 10 feet, maybe more.

Q. Now, the place where the fellow was drilling the hole in the rock, that was a little above where the dam was afterwards put, was it not, just above the falls?

A. Oh, it is about 50 or 60 feet further.

(Whereupon a recess was had for ten minutes.)

Q. Mr. Black, you left there about three o'clock in the afternoon of October 3d, and I think you said you didn't go back for a long time afterwards—that is to say, that place where the dam is?

A. Never went back until last Sunday.

Q. Do you think you would know that rock if you saw a picture of it that the man was drilling on?

A. I don't know. [729—579]

Q. I call your attention to a picture, marked Plaintiff's Exhibit 3, and direct your attention to the rock there on the side of the creek and ask if that is the same rock that the man was drilling, as near as you can remember from the picture?

A. I couldn't say; I can't make anything out of this picture.

Q. That picture is taken from down the creek looking up, isn't it—you were standing up the creek looking down? A. I don't know.

(Testimony of Al. Black.)

Q. You are not able to tell from the picture whether that is the same rock or not, Mr. Black?

A. I couldn't tell; I couldn't tell if this picture is upside down or how it is only from the reading on the bottom.

Q. You couldn't swear positively whether or not, from the picture, that is the rock—the rock doesn't show clear enough? A. Not from that picture.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. I will ask you, Mr. Black, if you know how the bottom of that excavation that you made at the dam there is with respect to the bed of the creek, is the bottom of the excavation lower or higher than the bed of the creek? A. Why, it is higher.

Q. Consequently, the bottom of the flume that you put in would be higher than the bottom of the creek right down below it?

A. Yes; the grade, you know, it started in at nothing and it run up, I should judge, 6 feet, or it may be 8 feet.

Q. How deep down was that excavation, and how wide?

A. I think it was 8 feet wide, if I remember right and about six feet high—I ain't sure.

Q. And then it ran out to nothing?

A. Yes. [730—580]

Judge WINN.—Now, I desire to recall the witness, if your Honor, please.

The COURT.—Very well.

(Testimony of Al. Black.)

AL BLACK, upon being recalled for further examination, testified in behalf of the defendant as follows:

Direct Examination.

(By Judge WINN.)

Q. I will ask you under whose instruction was it that this water was turned through this cut that you made in the dam, into this ditch?

A. Under Mr. Burton's.

Q. What was your purpose in running the water through there? A. It was in your office.

Q. That he advised you, but what was your purpose in turning the water through?

A. To make a diversion of the water is what they told me.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. I hand you here a photograph marked for identification, Plaintiff's Exhibit No. 29, and ask you to look at it and tell me if that isn't a correct picture of the Ebner dam and flume as it was constructed. A. It looks like it.

Q. That is a picture of it, isn't it; it shows the dam and flume, and just where it takes the water through the dam? A. A picture as it looks now.

Q. Never been changed, has it, since it was first built? A. Yes, it has.

Q. The intake, Mr. Black, has that been changed?
[731—581]

A. There are a lot of things built on here.

(Testimony of Al. Black.)

Q. The flume was made a little larger, but the intake, I mean, is the same, isn't it?

Judge WINN.—What date, Mr. Hellenthal?

Q. The picture shows the intake just as it was when it was first completed in October, 1910, isn't that right, Mr. Black?

A. No, it ain't the same as it was then.

Q. What are the changes?

A. There are several changes here.

Q. Tell me what they are?

A. It looks to me in the picture as if it was all graded up around here since.

Q. I know, but I am talking about the flume and the dam; they are just the same, aren't they?

A. Well, it is in the same place, the headgate or the intake.

Q. The intake is just the same?

A. It looks to me about the same place, but this picture don't look the same as if I was up there.

Q. That picture shows the intake of the flume, doesn't it?

A. No, it shows the flume going into the dam.

Q. Shows the flume going into the dam—shows where it enters the dam, doesn't it? A. Yes.

Q. That is the same place it always entered the dam, isn't it, since it was put in?

A. Yes, but you see it looks like it was taken end-ways of it, and you cannot see where this cut was made.

Q. I am not talking about the cut,—I am talking about the flume.

(Testimony of Al. Black.)

(Not answered because of objection.)

Q. That shows the flume, Mr. Black—where the flume enters the dam just as it was when it was first put in there, don't it? A. No. [732—582]

Q. What is the difference?

A. Well, there is a whole lot of difference; you see there is water way over on this side, this looks like the dam had broke out there.

Q. I am talking about the place where the flume enters the dam? A. Yes, it looks like—

Q. That is just the same, isn't it?

A. It might be, that looks something like it but I can't say for sure.

Q. You cannot see any change between the conditions there when the flume was first put across the dam, or into the dam, or up to the dam, or whatever you might call it, and the conditions as they show on the picture—they are just the same, aren't they?

A. No, I couldn't say it is the same as it was then.

Q. Could you tell me any changes that have been made there?

A. I can just see a piece of the flume here; I can't see the Basin wagon-road, and from the looks of that picture I couldn't say for sure whether that is a picture of that dam up there or some other dam.

Q. You can tell that is the Ebner dam, can't you?

A. No, that might be a dam somewhere else.

Q. If that isn't the Ebner dam it is a dam that looks just like it, isn't it?

A. I cannot see the old Ebner flume on this side; I couldn't say for sure whether that is that dam or

(Testimony of Al. Black.)

some other one from that picture, there ought to be a flume there, you cannot see that.

Q. Anyhow, Mr. Black, the picture shows the bank of the creek, doesn't it, the ground that is covered by the brush where the brush runs off the creek?

(Not answered because of objection.)

Q. Now, the flume where it was put into the dam was put some few feet towards the center of the creek from the end of the [733—583] dam, wasn't it? A. I don't think so.

Q. Where was it with reference to the end of the dam—where did the flume abut up against the dam?

A. Well, the water came in right at the dam.

Q. The water ran right through the dam into the flume?

A. No, the flume went right to the end of the dam and then the water ran in.

Q. There was a hole cut through the dam itself and the water was put through that hole, and the water ran through the flume,—and through the dam into that flume, and that flume was standing on the ground that was lying up against the dam on the bed of the creek, isn't that right—that is to say it would depend on whether or not the water came up, but the flume was standing right up against the dam in the bed of the creek?

A. It went into the dam the same as they put most any flume I have seen—put it right through the dam.

Q. And the cut that was made, through which the water ran, was the same excavation in which the

(Testimony of Al. Black.)

flume now stands, if there is an excavation—is that right?

A. I think so; the water went through the dam into the flume.

Q. And when you let the water run though there it merely ran through one side of the dam on through down the creek?

A. Yes, it ran through the cut there because it washed out some of the grade that we made.

Q. Ran right along into the creek? A. Yes.

Q. It remained right in the channel of the creek, ran up to the dam—that is right isn't it; the dam was across the channel of the creek? A. Yes.

Q. Followed the channel of the creek, ran up to the dam, ran through the dam and down the creek, isn't that right? [734—584] A. Yes.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Now, let us understand you, Mr. Black; the portion of the cut wasn't in the creek bed was it—the cut was made to put the flume in, that wasn't in the bed of the creek, was it?

A. No, it was in the dam. I didn't understand either of those questions, Mr. Hellenthal's or yours.

Q. I mean this open cut that you made at the dam to put the flume in, that open cut wasn't in the bottom of the creek, it was up on the bank—the excavation? A. Yes, it was out on the bank.

Q. Then the water that ran through that excavation or that ditch that you cut there to put the flume

(Testimony of Al. Black.)

in, ran through that to the end of it, and then ran out on the ground and into the creek?

A. Went back into the creek again, wouldn't run any place else.

(By Mr. HELLENTHAL.) Permit me to ask him a question Mr. Black, I want to direct your attention to Defendant's Exhibit "Z," which is a photograph taken, I think, on November 4th, 1910, taken from above the dam; I ask you to look at that; that shows the intake of the flume, where the flume enters the dam, does it not? A. This doesn't tell here.

Q. You see the dam, don't you?

A. I see the dam here.

Q. The dam extends here a great distance beyond the intake of the flume, doesn't it? A. Beyond?

Q. The flume isn't on the end of the dam—the intake I am talking [735—485] about the place where the cut was made?

A. Here is the intake right here (indicating).

Q. That isn't anywhere near the end of the dam; the dam extends clear across the face of the picture?

A. Yes.

Q. And the hole that you made is pretty near the middle of the picture?

A. It wasn't in the end of the dam, no; of course it was put in the middle of the dam.

Q. The dam was built clear across the creek?

A. Certainly.

Q. And the flume was laid in the middle of the dam? A. Yes.

Q. Part of the dam was on one side of the hole that

(Testimony of Al. Black.)

you made, and part of it was on the other side?

A. Yes.

Q. There is a considerable piece of dam on both sides of where the hole was made? A. Yes.

Q. Right in the middle of the dam? A. Yes.

Q. And the dam extended from one side of the creek to the other side of the creek? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [736—586]

The defendant, further to maintain the issues on its part, introduced as a witness DAN RIORDAN, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Dan Riordan, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Dan, did you work up on Gold Creek in 1910, for Mr. Mackay? A. 1910?

Q. Yes. A. Yes, sir.

Q. Were you working up there on the Ebner property on October 3d, 1910? A. Yes, sir.

Q. Did you see Mr. Kinzie's people, or some of the Alaska-Juneau people up there on October 3d?

A. Yes, sir.

Q. You know where the dam of the Alaska-Juneau Company is now, don't you? A. Yes.

Q. And you know where the dam was at the time that the case was tried before Judge Cushman here; you were a witness here in that case, I believe, back

(Testimony of Dan Riordan.)

in May, 1911, you remember that? A. Yes, sir.

Q. You know where the dam was then at that time, do you? A. I do.

Q. Now, where were Mr. Kinzie and his people working on Gold Creek on the 3d day of October, 1910, with respect to where the dam was when Judge Cushman tried the case, and with respect [737—587] to where the dam is now—were the Alaska-Juneau people working on the dam above the dam or down below the dam?

A. They were working on the left-hand side of the creek going north.

Q. Would that be above the creek?

A. Up the stream.

Q. You know where the dam is now? A. Yes.

Q. And were they working up the stream or down the stream with reference to where the dam is now?

A. They were working about opposite.

Q. Some of them were working on the bank of the creek; was there anybody down in the bed of the creek?

A. There was some men making a box, and some of them were pulling logs down the hill.

Q. Did you see them try to do anything with that box on the afternoon of October 3d?

A. I seen them putting it into the creek with a rope on each end of it.

Q. Where did they put it in the creek with reference to where the dam is now—above the dam or below it? A. Above the dam.

(Testimony of Dan Riordan.)

Q. Now, did you go up to that place on the morning of the 4th of October, the next morning after Mackay and Al Black were arrested—did you go up to this same place? A. Yes.

Q. Did you see anything up there then in the creek?

A. Yes, I seen a box in the creek.

Q. Now, that box was in the creek then; was that up above where the dam is now, or down below where the dam is? A. Above where the dam is now.

Q. How was that box in the creek—did it just lie in the bed of the creek, or did one end lie in the bed of the creek and the [738—588] other run out on the bank?

A. The whole box laid in the creek.

Q. Did you notice how the box was fastened in; was it tied in, or how was it; did you go down to see?

A. No.

Q. I will ask you if you saw two logs across the creek up there that next morning?

A. The morning of the 4th?

Q. Yes.

A. No, sir; I didn't see no logs the morning of the 4th.

Q. Did they put in any logs on the day of the 3d of October? A. Yes, sir.

Q. How many logs did they put in across the creek up there? A. I think it was two.

Q. Were those logs above where the present dam is, or below—the logs they had across the creek,

(Testimony of Dan Riordan.)

were they up creek from the dam where it is now, or down the creek?

A. Down the creek from the dam—what dam do you mean?

Q. I am talking about the logs that were in there on the 3d—did you see them put two logs across the creek? A. Yes.

Q. I am asking you where those logs were put in on the 3d, whether they were up the creek from the present dam, or down the creek from the present dam? A. Up the creek.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Riordan, you went up there on the 3d, you say? A. Yes, sir.

Q. Were you with the fellows who were rolling rocks down the hill? [739—589]

A. Yes, sir.

Q. Down on the fellows that were working down below? A. Yes.

Q. And you noticed the men working down there on the ground, didn't you? A. Yes, sir.

Q. They were building a box—one thing they were doing? A. Yes, sir.

Q. And other fellows were taking some poles or logs down? A. Yes, sir.

Q. Did you know what those logs were for?

A. I didn't then.

Q. They were going to build a dam, weren't they?

A. I couldn't say.

(Testimony of Dan Riordan.)

Q. They put them across the creek?

A. Two of them across the creek is all I ever seen.

Q. And put some brush behind the logs?

A. I didn't notice that.

Q. Put some rocks and brush behind them,—you didn't notice that, couldn't see that from where you were? A. I couldn't.

Q. How far away were you?

A. All the way from 60 to 150 feet.

Q. You were up higher on the hillside—you were up a couple of hundred feet? A. Maybe.

Q. They built that box there on the 3d day of October, you remember that? A. I do.

Q. And they took it down and tied it into the creek in the afternoon, didn't they?

A. Yes, sir.

Q. Just sunk it in the creek and tied it there?

[740—590] A. Yes, sir.

Q. When did you leave there on the 3d of October—did you stay there the whole day?

A. About half-past five.

Q. You don't know what they did there between half-past five on the third of October and the next morning? A. No, sir.

Q. You don't know if they built a dam, put the box in the creek, and took away the water at that time or not?

A. Not after half-past five of the 3d.

Q. In the morning when you came back didn't you see those logs across the creek?

(Testimony of Dan Riordan.)

A. No, I didn't see them; there was none there that I could see.

Q. You wouldn't testify now that there were no logs across the creek on the morning of the 4th?

A. Didn't see them there on the morning of the 4th.

Q. Didn't you see the logs that were put there the day before?

A. I seen logs on the side but not in the center.

Q. No logs across the creek?

A. Not that I could see.

Q. You didn't see the flume in the creek on the morning of the 4th? A. Yes.

Q. You remember that fellow drilling a rock on the bank of the creek on the 3d of October, don't you? A. I do.

Q. That rock was right where the logs were put across the creek, wasn't it?

A. Which, the rock that was on top of the two boulders?

Q. Yes. A. That was below them logs.

Q. How far below where the logs were?

A. I couldn't just state how far. [741—591]

Q. The rock was right above the falls, wasn't it?

A. Yes, sir.

Q. Right above the falls the man was drilling a hole in the rock? A. Yes.

Q. And when you saw the logs they hadn't got down to that point yet?

A. I didn't see them any more after that day.

Q. Do you remember what the conditions were

(Testimony of Dan Riordan.)

with reference to the logs across the creek, or where the man was drilling the rock on the morning of the 3d—you didn't notice the place where the man was drilling the next morning? A. No.

Q. And you don't know whether there was a flume there or not?

A. When the man was drilling the rock there was none there.

Q. You didn't notice the next morning whether there was a flume or not? A. No.

Q. Didn't notice whether there was a dam across there the next morning or not?

A. The water was too high.

Q. You couldn't see it because the water was too high? A. You couldn't see it.

Mr. HELLENTHAL.—That's all.

Q. (By Judge WINN.) You say the water was too high, what do you mean?

A. If there was any logs there the water would be over them and you couldn't see the logs.

Judge WINN.—I ask the privilege of asking him a question on direct examination.

Q. Did you ever build any dams, Mr. Riordan?

A. Lots of them.

Q. Now, what would you say as to whether or not a dam could have been put in the creek at that stage of water?

(Objected to and not answered.)

(Witness excused.) [742—592]

(Testimony of George Jacaleve.)

The defendant, to further maintain the issues on its part, introduced as a witness GEORGE JACALEVE, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of George Jacaleve, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. George, how long have you lived in and about Juneau? A. About 18 years.

Q. You know Mr. Mackay, don't you?

A. I do.

Q. Did you ever do any work for Mr. Mackay in 1910, George? A. I did.

Q. Where? A. Up at the Ebner property.

Q. You remember approximately what time you commenced working for Mr. Mackay, and how long you continued that work up there on the Ebner property?

A. I started in there about the 1st of October, 1910; I quit the 4th of October, 1911.

Q. Quit when?

A. October 4th, 1911; a little over a year I worked up there.

Q. Then, you were up there then on October 3d, 1910? A. Yes, sir, I was.

Q. Where were you working, George?

A. On the open cut above where the Alaska-Juneau dam is now.

Q. Did you notice any people go up there in the

(Testimony of George Jacaleve.)

bed of the creek? A. I did.

Q. On October 3d, 1910? A. I did.

Q. Did you see Mr. Kinzie up there? [743—593]

A. Yes, sir.

Q. And some men with him? A. Yes, sir.

Q. About how many men, George, do you remember, approximately?

A. Eight or ten, something like that.

Q. You know where the Alaska-Juneau dam is now, do you? A. Yes, sir.

Q. And you were working all through that season up there—do you know how it was built, when it was first built—that is before Judge Cushman tried the case?

A. I don't know anything about the Cushman case.

Q. Well, we will confine the proposition then to the condition the dam is now. Do you know as to whether or not there was ever any alterations made in that dam after they first built it, the Alaska-Juneau dam, or do you just know it was as it is now, George?

A. I know there was a box there put up before they built the dam where the dam is now.

Q. Where was Kinzie's people working with reference to where the Alaska-Juneau dam is now, up or down the creek?

A. They were down in the creek.

Q. Was there any up the creek from the Alaska-Juneau dam—any working, going up the creek?

(Testimony of George Jacaleve.)

A. Up the creek, where the Alaska-Juneau dam now is?

Q. Yes.

A. They were opposite on the old flume.

Q. What were they doing over there?

A. They were building boxes.

Q. Now, did you see them put that box in the water into Gold Creek? A. No, I didn't.

Q. I will ask you if you saw Kinzie's people trying to put that box in the creek on October 3d, the day that Mackay was arrested?

A. I seen them taking a box and timber around back and forth, [744—594] but I don't know just exactly what they were doing; they tried to put some logs in the creek.

Q. Were you back there on the morning of the 4th? A. I was.

Q. Did you see any box in the creek up there the next morning? A. Yes.

Q. On the 4th? A. Yes.

Q. Do you know how it was fastened, George?

A. It was fastened a ways down so I don't know if it was moving around in the water; there was plenty of water in the creek.

Q. Now, where was that piece of flume in the creek—was it above the Alaska-Juneau dam as it is now built? A. Above the dam.

Q. And you could say about how many feet, that is, approximately?

A. Cannot say exactly; between 40 and 50 feet,

(Testimony of George Jacaleve.)

something like that; I don't know, it is hard to tell, it is quite a ways up.

Q. Did you stay around there the day of the 4th, or where did you work on the 4th, the day after Mackay was arrested?

A. I was there working in the shop there.

Q. What time was it that you saw this box that you have just described in the creek on the 4th, was it in the afternoon or morning?

A. About 10 o'clock in the morning.

Q. Did you see anything else at that time across the creek?

A. I think there were some logs across the creek; I am not sure.

Q. You saw the logs the day before?

A. Yes, I did.

Q. How many were there?

A. Three or four, I don't know; they were all piled up against two boulders.

Q. That was all you saw of the logs?

A. Yes. [745—595]

Q. Did you see them there on the morning of the 4th? A. Yes.

Q. Was there any dam built across those logs or underneath the logs?

A. No, just a little box above the logs in the water.

Q. How was the box that was in the creek, George—was it lying in the bed of the creek, or was part of it in the creek and the other part out on the bank?

(Testimony of George Jacaleve.)

A. It was all in the water so that the water could run through; it was moving, jumping around, too much water in the creek.

Q. It was turning around when you saw it?

A. Yes.

Q. Did you work on the flume grade, George?

A. I had started to work there the first day when I commenced.

Q. What were you doing up there during all that year you were there with Mr. Mackay?

A. All year?

Q. Yes.

A. All kinds of work; I was watchman, worked in the blacksmith-shop three or four months, and was all around.

Q. Did you ever see a tent up there near the Ebner dam, George? A. I did.

Q. When did you first see that tent there?

A. On the evening of October 4th, when I went out to work in the shop.

Q. Who was in the tent, if you know, at that time?

A. A fellow by the name of Harri.

Q. Was anyone else there with him?

A. Not that night.

Q. Did any other man come there with Harri at any time the tent was there, or stay with Harri?

A. Yes, I believe the next day. [746—596]

Q. Who was that fellow, do you know?

A. A fellow by the name of Scotty Bruce.

Q. How long did he stay there with Harri?

A. I don't remember; he was there quite a little

(Testimony of George Jacaleve.)

while, a week or two weeks.

Q. Do you remember, George, about how much of the high-line flume of the Ebner Company, which Mr. Mackay built—do you know about how much of that was cleared away or graded when Harri went up there to put his tent up—commencing at the point of the dam and going down creek, approximately?

A. About 1,500 or 2,000 feet along from the dam down the creek.

Q. Where was Harri's tent put with reference to the laid-out flume line or grade, was it on it, or how?

A. It was part on it, and he ran all around a fence so you couldn't get on it.

Q. You saw that fence?

A. I saw that fence—didn't see it put up.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That was a good tent Harri put up there, wasn't it?

A. It was pretty good, nothing extra, small tent.

Q. Now, when you were up there the 3d of October you saw three or four logs put across the creek?

A. Yes.

Q. Those logs were probably in the same place the next morning?

A. I think they were in the same place.

Q. Some brush piled behind the logs?

A. Didn't see it.

(Testimony of George Jacaleve.)

Q. Some rocks piled on the brush?

A. I didn't see any brush. [747—597]

Q. You were quite a ways from the brush?

A. Yes.

Q. About 200 feet? A. Yes.

Q. And if this brush was there, you wouldn't see it? A. I don't think so.

Q. Did you notice the man drilling a hole in the rock? A. I did.

Q. Was that a little above the falls?

A. Right in the falls, some place there.

Q. Right near the falls? A. Yes.

Q. Right at the falls, the rock was that he was drilling, wasn't it?

A. Yes. I know the place.

Q. How is that, right at the falls?

A. Right on the falls.

Q. And the logs were put across the creek right there where the man was drilling the hole?

A. No, they were above.

Q. When did you see the logs across the creek?

A. As soon as I came out to work there.

Q. On October 3d?

A. On October 3d, yes, sir.

Q. How did the man get over to that rock from the other side?

A. Well, jumped from one log to the other.

Q. The creek was pretty high, wasn't it?

A. Sometimes they walked over the logs.

Q. Weren't the logs right there while the man was drilling on the rock? A. Yes.

(Testimony of George Jacaleve.)

Q. They were right there where the rock was being drilled, weren't they. [748—598]

A. They were right near there.

Q. They were not more than two or three feet from where the man was working?

A. 40 or 50 feet, quite a long ways.

Q. That was on the 3d?

A. The 3d and the 4th.

Q. You didn't see the logs on the morning of the 4th, did you? A. I did.

Q. Didn't you testify in answer to Judge Winn's question that you didn't see them?

A. I did see them, I didn't testify that I didn't see them.

Q. Did you see them in the morning at the same place? The morning of the 4th?

A. Same place.

Q. Above where the man was drilling rock?

A. Yes, sir.

Q. How were the logs anchored?

A. Behind two big boulders.

Q. Were they large boulders they were anchored behind? A. Yes, sir.

Q. And the flume that you saw on the morning of the 4th was right at the place where the logs were?

A. It is pretty close to the logs.

Q. Right at one side of where the logs were?

A. Yes, sir.

Q. So that the water, if it was turned in the creek at the logs it would run into that flume?

A. I believe that was their intention.

(Testimony of George Jacaleve.)

Q. That was the way it was placed, wasn't it?

A. Yes, sir.

Q. That flume was anchored right behind that rock that the man was drilling?

A. Away back. [749—599]

Q. It was not right behind the rock that the man was drilling on, are you positive about that?

A. I am positive, yes.

Q. Now, on the morning of the 4th did you know it was an important thing to find out where that flume was? A. No.

Q. Did you pay any particular attention to where it was?

A. We seen it as soon as we got down there.

Q. Did you have any object in taking notice of where that flume was on the morning of the 4th?

A. We always seen what the boys were doing.

Q. How is that?

A. That day as soon as we came down we commenced looking around to see who was down there.

Q. The flume wasn't broken up, was it?

A. Yes.

Q. What happened to it?

A. Rocks rolled down there and busted it.

Q. What day was it broken up?

A. The 4th.

Q. Who broke it up? A. We did.

Q. You are one of the men who broke it?

A. I don't know who done it, we done it.

Q. How is that?

(Testimony of George Jacaleve.)

A. I don't know who done it, our crew done it.

Q. You rolled the rocks down and broke the flume? A. Yes.

Q. You had nothing particular to call your attention to the particular position of where that flume was on the morning of the 4th?

A. I know where it was now on the 4th; yes, I do.
[750—600]

Q. What? A. I know where it was.

Q. Now, don't you know as a matter of fact there are not two rocks in that creek up to within 50 feet of where the dam now is where those logs could be anchored except at the place where the dam is?

A. I don't know; I saw that dam alongside the logs, and the logs behind the two boulders; that is all I know about it.

Q. The only two boulders behind which you could put those logs are the two right behind the logs?

A. Yes, sir.

Q. Those are the only two boulders that there are there? A. Lots more down the creek.

Q. I mean up the creek between 40 and 50 feet, there are no boulders you could anchor those logs to, are there? A. No.

Q. No boulders above there, are there? A. No.

Q. And the logs are anchored behind two boulders? A. Yes.

Q. And that the flume was right to one side of the logs where if the logs were made into a dam the water would be turned into the flume?

A. It was something like it, and *the a* small box.—

(Testimony of George Jacaleve.)

Q. That box was right between the boulder they were drilling on and the bank, wasn't it?

A. No, it was way up on the one that they were drilling on.

Q. Away above it, yes? A. Yes.

Q. And the flume, though, was right on one side of the creek so that the water would be turned into it by the logs? A. I guess it is.

Q. And the logs were behind two boulders?

A. Yes, sir. [751—601]

Q. And the only two boulders that were there were right behind the two logs?

Judge WINN.—Are there other boulders up the creek? A. Away up, yes, not right there.

Q. (By Mr. HELLENTHAL.) You don't know whether any of those boulders then have been removed since that time, do you? A. I do not.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(WITNESS EXCUSED.)

(Whereupon court adjourned until to-morrow morning.) [752—602]

MORNING SESSION.

July 30, 1914, 10 A. M.

The defendant, further to maintain the issues on its part, introduced as a witness OSCAR HARRI, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Oscar Harri, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Your name is Oscar Harri? A. Yes, sir.

Q. How long, Mr. Harri, have you lived in and about the town of Juneau? A. Since 1902.

Q. You are somewhat acquainted with the Ebner Gold Mining Company's property, aren't you, Mr. Harri? A. Yes, sir.

Q. You were watchman up there for some length of time and worked around on the property, or in the employ, while Mr. Ebner was running it, didn't you? A. Yes, sir.

Q. Now, I will ask you, Mr. Harri, if you also worked, or were in the employ, or on the property up there at some of the time that Mr. Tripp was up there, in 1909? A. Yes, sir.

Q. Were you still watchman and keeper of the property? A. Yes.

Q. Part of the time he was there? A. Yes.

Q. Now, you have had pointed out to you what is the lower side line of what is called the Lotta Lode claim on that property; haven't [753—603] you?

A. Yes.

Q. I will ask you, Mr. Harri, if you had anything to do with brushing out that lower side line of the Lotta claim in 1908? A. Yes.

Q. Do you know where there is a cabin across the creek that is claimed to be on the Lotta Lode claim?

A. Yes.

Q. That is on the right-hand side of the creek as

(Testimony of Oscar Harri.)

you go up the creek? A. Yes.

Q. I will ask you if you ever saw any corner stake in and about that cabin in 1908? A. Yes, I saw it.

Q. To the best of your remembrance what was there there, Mr. Harri—a new stake or an old stake, one stake or two stakes?

A. Just a little above the cabin there was an old stake, and a new one was put right along that one and tied up to the old one.

Q. Now, then, did you ever see any other stake at that time across the creek and along near the Basin road? A. Yes.

Q. You saw a stake there? A. Yes.

Q. Where with reference to these two stakes now that you have testified concerning was the line that you brushed out—was it between the stakes or below the line of the stakes or up above the line of the stakes—where was it with reference to those stakes that you testified you brushed out?

A. The one that was on the Basin road, the line was brushed out up to the stake.

Q. Up to the stake, by the cabin? [754—604]

A. Up to the stake by the cabin, yes.

Q. Then you commenced at that stake at the cabin, did you, and brushed down to Gold Creek?

A. Down to Gold Creek, yes, sir.

Q. Did you see any flag or anything put up at any point near there?

A. Flag on a post and a flag on the Basin road up by the cabin.

Q. There was a flag on a post there by the cabin

(Testimony of Oscar Harri.)

and also a flag you say on a post near the Basin road?

A. Yes.

Q. And was it between those two posts that you brushed out?

A. Yes, sir.

Q. Down the creek from the cabin?

A. Yes.

Q. Just tell, Mr. Harri, to the Court how you brushed out that piece from the stake there by the cabin over to the creek?

A. Brushed down the loose ground on the line, and went from the post down to the creek as far as we could; then we went across the roadside and you couldn't see through it, and we had to go over it and cut it out again; the limbs were hanging over the line and you couldn't see it from the road.

Q. Then you went over it the second time and cut out these limbs that hung from the big alders over the line?

A. It was cut about 16 to 20 feet wide all along.

The COURT.—How wide?

A. About 16 to 20 feet; I don't remember, that is as near as I can tell.

Q. Were you up there in 1910—you were in 1909 while Mr. Tripp was there?

A. Yes, I was there all the time.

Q. I will ask you to state to the Court as to whether or not that brushed out line could be seen at that time?

A. It could be easily seen.

Q. In 1909 and 1910?

A. Yes. [755—605]

The COURT.—What part of 1910—when in 1910?

Q. You were up there in 1910 to what time, Mr.

(Testimony of Oscar Harri.)

Harri—to refresh your memory on that, you know when the Ebner people came up here and Mr. Tripp turned over some things to them and Mr. Tripp quit work up on the property?

A. I think Mr. Tripp—well, he was up there and worked from about the middle of August until January 10th, when he lost out there.

Q. Now, I think the dates, Mr. Harri, that Mr. Tripp—in order to refresh your memory—that he quit up there was sometime in August, 1910, when the Bent people came,—now, what part of 1910 were you on the property, was it before August or after August? A. It was before August.

A. Before August 1st? A. Yes, sir.

Q. You were up there on the property, and that is the time you say this brushed out line could be seen?

A. Yes.

The COURT.—Do you know how long before?

A. I can't remember just exactly.

Q. Were you on the property in 1910 when Mr. Mackay had charge, too, Mr. Harri—did you work any for him?

A. I was working for Mr. Mackay first when he started the compressor there; I ran the compressor for him.

Q. You mean the old compressor down in the creek bed? A. Yes; the old compressor.

Q. Do you remember, Mr. Harri, of being up on this property in July when Mr. Bent's party was here? A. Yes, I was up there then.

(Testimony of Oscar Harri.)

Q. And you were up there in the month of June, 1910, weren't you?

A. Yes, I was there in June and July.

Q. I will ask you if you were there about the Ebner dam at any [756—606] time in June, 1910?

A. Yes, several times.

Q. Did you see any notice posted on the dam in June, 1910, Mr. Harri, or paper? A. Yes, I did.

Q. Do you remember whose name was signed to any paper that you saw posted on the Ebner dam in June, 1910?

A. The notice was signed by H. T. Tripp.

Q. Do you remember anything about it saying how many miner's inches of water was claimed?

A. It was 10,000 miner's inches.

Q. When was the last time, Mr. Harri, that you saw that notice posted on the Ebner dam?

A. I think it was the time that Mr. Bent came up; it was in July, I believe; it was in July, when I went up, that was the last time I went up there.

Q. When you went up there with Mr. Bent and his party was the notice still posted on the dam?

A. Yes, I saw it there.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Did you personally observe that lower side line of the Lotta during June or July of 1910, Mr. Harri, or don't you remember whether you specially looked at it or not? A. If I didn't, I saw it.

Q. Do you remember that you took special notice

(Testimony of Oscar Harri.)

of that brushed out line during June or July of 1910, or don't you remember whether you took special notice of it or not at that time?

The COURT.—The brushed out line?

A. I couldn't help it. [757—607]

Q. Do you remember of seeing it during those months? A. Yes, sir.

Q. What time during the months did you see it?

A. I seen it any time I passed on the road, you could see that line, couldn't help but see it.

Q. You could see it from the Basin road?

A. Yes, sir.

Q. That is the only place you ever looked at it from?

A. I saw it right on the line, too, near the cabin.

Q. When? A. In the summer.

Q. What time in the summer?

A. I don't know the dates, I was there several times during the summer.

Q. Tell me one time when you were there, about what time?

A. I couldn't remember the dates exactly.

Q. Did you see that line every time you passed by there? A. Yes, sir.

Q. Did you always look to see if that line was still there—did you—what is your answer?

A. I seen the line; that is all I can say.

Q. Did you see it every time you went by there?

A. I think I did.

Q. Every time you went by there, how often did you go by there in June or July of that year?

(Testimony of Oscar Harri.)

A. Well I had to go downtown twice a week to get myself some grub.

Q. And every time you went by there on the Basin road you took a look at that line? Are you sure of that?

A. It was my business to look after the property and look after everything, and I kept my eye on that line.

Q. Was it your business to look after that line?
[758—608] A. Yes, sir.

Q. Did you have any other business except to look after that line?

A. I had business to look after the whole property.

Q. Did the looking out after the whole property keep you so busy that you would sometime overlook that line?

(Not answered because of objections.)

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [759—609]

The defendant, to further maintain the issues on its part, introduced as a witness JOHN SOINI, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of John Soini, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Your name is John Soini? A. It is.

Q. How long, Mr. Soini, have you been around

(Testimony of John Soini.)

Juneau making it your home?

A. I first came to Juneau in 1900.

Q. In 1900? A. Yes.

Q. What is your business?

A. I was laboring the first time I was here, my occupation now is a carpenter.

Q. Do you know Mr. H. T. Tripp?

A. Why sure, yes, I know him.

Q. Did you know Mr. Tripp in the year of 1910, John? A. Yes, I know him before.

Q. Now, I will hand you, John, a paper here that is marked Defendant's Exhibit "C," in this case, and ask you if you know anything about that notice?

A. Yes, I know; I was with Mr. Tripp.

Q. Did you see Mr. Tripp write out this notice?

A. Yes certainly; we was the only two fellows in the Ebner bunk-house, we started out from Juneau about half past five in the morning.

Q. Mr. Tripp asked you to go up there with him?
[760—610]

A. Yes, the day before late in the evening.

Q. Now, did you see Mr. Tripp make any copy of this notice, John?

A. Yes, sir, sure, he made a copy of it.

Q. How did he make it?

A. Had carbon paper between two copies.

Q. What did he do with the carbon copy?

A. Put it in his pocket, his copy.

Q. Now, did you go up to the Ebner dam at the time he posted it?

A. Sure, I nailed that same kind of a paper on the post myself.

(Testimony of John Soini.)

Q. On the Ebner dam? A. Yes.

Q. What date did you put up—put it on there—with reference to the date and time that Mr. Tripp wrote it out—the same day?

A. The same day, 20th of June.

Q. 1910? A. Yes, early in the morning.

Q. You are the same John Soini that is signed on there *was* a witness—your name is on the paper?

A. Yes, my name is down.

Q. As a witness? A. Yes.

Judge WINN.—That's all.

Mr. HELLENTHAL.—No cross-examination.

(WITNESS EXCUSED.) [761—611]

The defendant, to further maintain the issues on its part, recalled as a witness JOHN CARLSON, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of John Carlson, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Now, I *don't John*, whether I asked you this question yesterday or not; for the sake of being sure of it I will ask you now. I will ask you if you ever saw any water running through the box which you say was put in the open cut at the Ebner dam of October 4th, 1910?

A. Yes, I seen the water turned in there.

Q. When was the water turned into that box that was put in there, John, about what date?

A. October 4th, 1910.

(Testimony of John Carlson.)

Judge WINN.—That is the only question I desired to call the witness for.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You testified before, didn't you, John, that you were not there when there was any box put in, didn't you? A. No, sir.

Q. You didn't testify to that? A. No, sir.

Q. Didn't you testify before that you put in the headgate and that you didn't know anything about putting a box in?

A. That is the box I referred to, there was no other box there [762—612] at that time except the headgate; the headgate and the box, as I understand, that has been referred to, are the same.

Q. There was no other box on the 4th of October, except the headgate you put in?

A. Not that I know of.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Let me understand, you, John,—do you know that there was a box put in in this open cut about October 4th?

A. Yes, this box is the headgate, I understand, isn't it?

Q. You are testifying that the box is part of the headgate? A. Why, yes.

Q. So that box was put in and the water turned through it on that date? A. Yes.

(Testimony of Al. Black.)

Judge WINN.—That's all.

(WITNESS EXCUSED.) [763—613]

The defendant, to further maintain the issues on its part, recalled as a witness AL BLACK, who, being previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Al Black, for Defendant (Recalled).

Direct Examination.

(By Judge WINN.)

Q. Al, I don't remember whether I asked you yesterday or not—when did you first see this box that was put in the open cut at the Ebner dam?

A. After we went back from the trial.

Q. You don't just remember what date that was?

A. I don't remember what date it was.

Q. Now, I will ask you whether or not there was any water running through that box when you went back up there? A. There was.

Q. Now, another question—I will ask you, Al, with respect to the new dam—after you commenced building the new dam, or the new flume, I will ask you whether or not the water was turned in that new flume before the entire flume was built?

A. Yes, it was; it was turned in and run in a ways, and then turned out again.

Q. Was or was not that sort of plan kept up right along as you constructed the new flume line of the Ebner Company? A. Yes.

Q. It was kept up? A. Yes.

(Testimony of Al. Black.)

Judge WINN.—That is the only question I desired to ask him. [764—614]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Al, you only carried that water part way, the bank wouldn't allow you to carry it all the way?

A. We turned it out where we could.

Q. You carried it probably half way to the mill site—there is a gulch there and you let it run down that gulch—is that the way of it?

A. Yes, it run down there.

Mr. HELLENTHAL.—That is all.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [765—615]

Judge WINN.—I now offer the testimony of Lloyd G. Hill taken at the preliminary hearing in this case.

Mr. HELLENTHAL.—No objection.

(Whereupon said testimony was received in evidence and marked Defendant's Exhibit "B-1.") [766—616]

Judge WINN.—Will you agree that the notice set out in the answer in this case is a copy of the original notice which was posted?

Mr. HELLENTHAL.—If you have compared it and you say it is a copy I will let that be considered in evidence.

Judge WINN.—The pleadings in this case, your Honor, while the posting of this notice is perhaps admitted, there may be some question as to the time it was posted; now the pleadings—I don't know whether this—

(Testimony of Al. Black.)

Mr. HELLENTHAL.—Let the record show that I admit that John R. Winn, acting as agent for the Ebner Gold Mining Company, posted the notice to which his name is subscribed, on the date mentioned in the notice—*this* is to say, the 17th day of August, 1910, on the old Ebner dam; and let the record further show that I admit it was posted on there—on a plank or a post which stuck up above the top of the Ebner dam, and that in doing this Judge Winn was acting as the agent of the Ebner Gold Mining Company.

Judge WINN.—I offer in evidence a certified copy of the notice just referred to, which bears date of August 17, 1910, signed by the Ebner Gold Mining Company, by John R. Winn, its agent and attorney; also, I offer certificate of the recorder which is on the notice, which reads as follows: “Filed for record at 3:50, August 17, 1910, and recorded in Book 10 of Placers, page 181, G. C. Winn, District Recorder.”

(Whereupon said notice was received in evidence and marked Defendant’s Exhibit “C-1.”)

The COURT.—By consent of counsel it is agreed that the plaintiff may introduce some rebuttal testimony at this time. [767—617]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal, W. R. LINDSAY, who, having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of W. R. Lindsay, for Plaintiff (in
Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Mr. Rufus Lindsay?

A. Yes, sir.

Q. You have been sworn as a witness before?

A. Yes, sir.

Q. Mr. Lindsay, were you on the ground at the point where the Alaska-Juneau dam is now situated on or about the 3d day of October, 1910?

A. I was.

Q. On what day were you there?

A. I was there on the 3d and 4th and 6th.

Q. Now, did you see any work done in connection with the drilling of a boulder there at the point where the dam is placed?

A. They were drilling a boulder there where the dam is now when I was up there on the 3d.

Q. Do you know where the dam was placed in the creek on the 3d of October, Mr. Lindsay,—were you there when the dam was placed in the creek on the 3d of October, 1910?

A. They were working on the dam when I was there.

Q. Where was the place where they were working on the dam while you were there with reference to the lower side line of the Lotta claim—do you know where the lower side line of the Lotta was brushed out? A. Yes. [768—618]

(Testimony of W. R. Lindsay.)

Q. You know where those stakes were?

A. Yes.

Q. Did you know at that time?

A. I did, on the 3d.

Q. You knew where the brushed-out line was?

A. On the 3d.

Q. Where was the place that the dam was put in on the 3d of October with reference to that line—it was below that line? A. Yes, sir.

Q. Where was it with reference to the place where the dam is now—was it on the Lotta claim or off the Lotta claim?

A. It was not on the Lotta claim.

Q. Where was it with reference to the place where the dam now is?

A. It was in exactly the same place as it is now.

Q. Were you there on the morning of the 4th?

A. I was there some time during the day of the 4th; I don't remember the exact time I was there.

Q. Did you see and observe the place where the dam was at that time? A. Yes.

Q. Where was the dam with reference to the Lotta claim—was it on or off the Lotta claim?

A. It was off the Lotta claim.

Q. Where was it with reference to the place where the dam now is?

A. Exactly the same place.

Q. Now, Mr. Lindsay, I call your attention to a photograph received in evidence as Plaintiff's Exhibit No. 3, and ask you to look at it and state if you recognize the matters and things shown in that

(Testimony of W. R. Lindsay.)

photograph. A. I do. [769—619]

Q. And whether that was the condition of things on the 4th day of October, 1910? A. Yes.

Q. Calling your attention to this photograph, can you point out to the Court the boulder on which the man was drilling on the 3d, and the boulder to which the dam was anchored on the 4th, when you saw it? Will you show the Court where those two boulders are in that picture?

A. The man was drilling at the end of the logs shown in the picture, just about at the end of the rock, the end next to the boulder.

The COURT.—Which rock, the rock here at the bottom of the picture?

A. Yes, it was on the far end of that rock; the dam was anchored between these two boulders, the two large boulders shown on the far side of the creek.

The COURT.—Mark those boulders T and U.

(Witness does so.)

Q. Now, where was the dam anchored on the opposite side of the creek—will you point to the Court behind what boulders it was anchored?

A. It was anchored against the rock marked X.

Q. Where were those rocks, Mr. Lindsay, with reference to the brushed-out line of the Lotta—the line of the Lotta was brushed out at that time, wasn't it? A. Yes, sir.

Q. Where were those boulders and where was this dam with reference to that line?

A. Below the line.

Q. Not on the Lotta as shown by that line?

(Testimony of W. R. Lindsay.)

A. Yes, sir.

Q. Now, the flume-box, that is also shown in this picture, isn't it, Mr. Lindsay? [770—620]

A. It is shown, what was left of it on that morning.

Q. Part of it had been broken up? A. Yes, sir.

Q. Where was that with reference to this brushed-out line of the Lotta?

A. It was below the brushed-out line.

Q. And not on the Lotta, as marked by that line?

A. It was not.

Q. Now, calling your attention to Plaintiff's Exhibit No. 15, another photograph, it shows the completed dam, does it not? A. Yes, sir.

Q. As it is on the ground now. I will ask you to point out to the Court, as near as you can show him, where the various rocks are that you have marked on Plaintiff's Exhibit 3 and where they appear on exhibit No. 15.

A. The one marked U is the same one marked U on the other one, exhibit No. 3, and the one marked T on exhibit No. 15 is the same as the one marked T on exhibit No. 3; the other one doesn't show on here.

Q. The water was higher when exhibit No. 15 was taken and was taken over the dam and rather obscures the dam somewhat? A. Yes.

Q. Now, you remember the time that Judge Cushman rendered his decision in this Lotta, Parish No. 2 litigation?

A. Well, I don't remember the exact date.

(Testimony of W. R. Lindsay.)

Q. Approximately?

A. I remember reading the decision.

Q. Now, at that time was there any change made in the position of the dam, under your directions?

A. No.

Q. What change was made?

A. There was a little bit of it moved I believe—the end of one [771—621] timber, a small piece of timber that stuck over the line, had nothing to do with the logs in the dam itself.

Q. The dam itself at that time, where was that with reference to that same brushed-out line of the Lotta?

(Not answered because of objection.)

Q. What was done—just explain in your own way what you did under that decision?

A. I didn't have the doing of that.

Q. What was done there—didn't you survey it?

A. No, George Jones had charge of the work.

Q. You did the surveying?

A. No, Stewart did the surveying.

Q. Do you know where the dam now is with reference to where it was before Judge Cushman's decision? A. Yes, it is in the same place.

Q. The dam itself hasn't been moved at any time since it was put in there on the 3d of October, 1910?

A. No.

Q. You were up there on the Ebner works in October, weren't you? A. Yes.

Q. 1910. What did you do up there? What time were you up there? A. On the 4th and 6th.

(Testimony of W. R. Lindsay.)

Q. When you were up there on the 4th did you observe the conditions about the vicinity of the Ebner dam?

A. Yes, the general conditions.

Q. Was there any grading done—you know where Harri had his tent that day? A. Yes.

Q. On what claim was that?

A. On the Russell lode.

Q. The claim belonging to the Alaska-Juneau Company? [772—622]

A. Yes.

Q. How much grading had there been done between Harri's tent on that day and the Ebner dam, that you observed? A. I didn't observe any.

Q. Did you go up to the dam?

A. I was up within 100 feet of the dam.

Q. Was the water running through the dam or over the dam at that time?

A. It was running over the dam.

Q. Was there any evidence of a dam having been cut at that time? A. None that I could see there.

Q. What, if anything, did you observe there at the time with reference to the dam having been cut?

A. Nothing.

Q. Did you see any cut in the dam? A. No.

Q. Was there any visible from where you were?

A. No.

Q. When were you back there the next time?

A. On the 6th.

Q. What, if anything, was going on there on the 6th—what time did you go up there on the 6th?

(Testimony of W. R. Lindsay.)

A. I went about 12:30—between 12:30 and 1 o'clock on the 6th.

Q. What did you observe then?

A. The men were cutting a hole through the dam and they were also working on the first two or three boxes of the flume.

Q. How long did you remain there?

A. I was up there a short time; I went back again at 3 o'clock on the 6th.

Q. Then what did you see?

A. There were eight or ten inches of water running through those boxes in the flume and running back in the creek again. [773—623]

Q. Two boxes had been put in there?

A. Yes, something like that; I am not certain it was two, it wasn't over three, I know.

Q. There had been some flume-boxes put in?

A. Yes.

Q. How high was the flume then with reference to the way it is now, do you know?

A. Just about the same as it is now.

Q. Do you know anything about that new board being put down?

A. No, I understand it was put down lately.

Q. You have kept notes of this so you know what you are talking about? A. I have.

(Whereupon court adjourned until 2 o'clock P. M.)

(Testimony of Eli Mackey.)

AFTERNOON SESSION.

July 29, 1914, 2 P. M.

Mr. HELLENTHAL.—May it please the Court, I put Mr. Lindsay on to take up the time until noon, and if counsel agrees to it and it is agreeable with the Court, I will suspend Mr. Lindsay now and call other witnesses, and complete his examination later.

Judge Winn.—I will make no objection. [774—624]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal ELI MACKEY, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Eli Mackey, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

(Through interpreter.)

Q. What is your name? A. Eli Mackey.

Q. Were you working for the Alaska-Juneau Gold Mining Company on October 3d and 4th in the year of 1910? A. Yes.

Q. Do you know where the Alaska-Juneau dam now is? A. Yes.

Q. Do you know where work was done in connection with the building of the dam on October 3d, 1910, at or near the present dam—where the present dam now is? A. Yes.

Q. Do you know where there was a brushed out

(Testimony of Eli Mackey.)

line on the 3d of October, 1910, near where the Alaska-Juneau dam is now—a brushed out line near that point? A. Yes.

Q. Do you know where there was a rock drilled and blasted in that vicinity on the afternoon of October 3d, 1910, A. Yes.

Q. Who drilled that rock, if you know?

A. I done it.

Q. Where was that rock with reference to the brushed out line that crossed the creek near that point, was it above it or below it? [775—625]

A. It was a little below it.

Q. Do you know where the dam was placed in the creek on the evening of that day? A. Yes.

Q. Did you help put the dam in the creek?

A. Yes.

Q. Where was that dam placed on the evening of October 3d, with reference to that brushed out line to which you have testified—was the dam above it or below it? A. A little below it.

Q. Was there any flume placed in the creek or near the creek in the vicinity of that dam? A. Yes.

Q. Where was that flume and the intake to the flume with reference to the brushed out line across the creek in the vicinity of that point—above it or below it? A. A little below that line.

Q. Did you see that dam and flume on the morning of October 4th, 1910?

A. They broke the flume that night.

Q. Did you see the broken pieces there the next morning? A. Yes.

(Testimony of Eli Mackey.)

Q. Where was the dam and flume that morning with reference to the place where it was first put in?

A. Yes, it was in the same place.

Q. Have you seen the Alaska-Juneau dam since?

A. Yes.

Q. Where was that dam and flume placed in there on the evening of October 3d, 1910, with reference to the present dam and intake that is now on the ground? A. Same place.

Judge WINN.—You seem to answer before he gets through, don't [776—626] you, Mr. Interpreter—I would like to ask this interpreter a few questions.

The COURT.—Very well.

Q. Who do you work for?

A. Alaska-Juneau Company.

Q. How long have you been working for them?

A. About two months.

Q. What nationality is this witness? A. Finn.

Q. Are you a Finn? A. Yes.

Judge WINN.—If your Honor please, I object to this interpreter for my examination; they are both employees of the Alaska-Juneau Company, and I don't propose, if I can help it, to have interpreters of that kind interpret my cross-examination.

Mr. HELLENTHAL.—I will tell you what I will do, Judge Winn, this man speaks a little English and I will examine him in English and see if he can understand it enough to get along without the interpreter.

Q. (By Mr. HELLENTHAL.) Now, Mr. Mac-

(Testimony of Eli Mackey.)

key, I will ask you these questions in English, try and understand me; if you don't understand me say so, so I can make them a little plainer. Your name is Eli Mackey? A. Yes, sir.

Q. And you live in Juneau now? A. Yes.

Q. You know the Alaska-Juneau Gold Mining Company? A. Oh, yes.

Q. You work for them? A. Oh, yes.

Q. You worked for them in October, 1910?

A. Yes, sir. [777—627]

Q. Were you working for them on the 3d of October, 1910? A. Yes, I worked on the dam.

Q. Now, do you know where there is a brushed out line that crosses the creek near there?

A. Yes, I know that.

Q. You saw that brushed out line? A. Yes, sir.

Q. Did you see that in October, 1910?

A. Yes, sir.

Q. You know where there was a rock drilled in connection with putting a log in the dam?

A. Yes, I know that hole.

Q. You drilled the hole? A. Yes, sir.

Q. Where was that rock now, with reference to the line that crosses the creek there, that brushed out line—above it or below it?

A. Just a little below it.

Q. Do you know where the dam was put in on the 3d of October, 1910? A. Yes, sir.

Q. Now, where was that dam as you put it in there on the evening of October 3d—you worked on the dam? A. Yes.

(Testimony of Eli Mackey.)

Q. Helped put it in? A. Yes.

Q. Where was the dam, now, that you put in on the evening of October 3d with reference to that brushed out line—was it above or below the brushed out line—can you answer that question.

A. Yes, sir.

Q. Where was it, above or below the brushed out line? [778—628] A. Below.

Q. Where was the flume that you put in on the evening of October 3d—was that above or below the brushed out line? A. Below.

Q. Where was the intake to the flume that you put in that evening—above or below the brushed out line? A. Below.

Q. Did you see that dam and flume on October 4th, the next day?

A. No, they broke the flume October 4th.

Q. Were the pieces of flume that were broken—you saw those? A. Yes.

Q. Where were they with reference to the box that was there the evening before—in the same place or somewhere else? A. Yes, same place.

Q. Where was the dam, in the same place?

A. Yes.

Q. Did you see the dam lately—you know where the Alaska-Juneau dam is now? A. Oh, yes.

Q. Where was the dam as you put it in on the evening of October 3d with reference to the place where the dam is now—do you understand what I mean by that? A. Yes.

Q. The dam that you put in on October 3d, was in

(Testimony of Eli Mackey.)

the same place, or some other place, than the dam that is in there at present is? A. Same place.

Mr. HELLENTHAL.—You may cross-examine.
[779—629]

Cross-examination.

(By Judge WINN.)

Q. What time did you go up to this place on October 3d, in Gold Creek? A. What time?

Q. What time of the day?

A. I guess it was 9 o'clock.

Q. 9 o'clock in the forenoon? A. Yes.

Q. In the morning? A. Yes, morning.

Q. Who went with you?

A. Mr. Henderson and Mr. Kinzie.

Q. Mr. Kinzie and who?

A. Mr. Henderson and Mr. Kinzie.

Q. What were you doing down there, drilling on this rock? A. Built the flume.

Q. What were you drilling on the rock for—to bolt the logs to? A. Yes, sir.

Q. How much brush was there cut out around there when you went to work on this rock—how much brush was there cut out?

A. Not very much, a little piece.

Q. Just a little narrow piece of brush cut out?

A. Yes.

Q. That was cut out right where this rock that you were blasting on was? A. Yes.

Q. So the rock that you were going to blast was in the bed of the creek, down in the creek?

A. Yes, in the creek.

(Testimony of Eli Mackey.)

Q. There was just a little brush cut out around that place? [780—630] A. Yes.

Q. There wasn't any brush cut out in the hill above—just a little cut out where you were working on that rock? A. Yes, sir.

Q. Did you see Kinzie and his people put in a piece of flume in the creek on the 3d? A. Yes.

Q. On the 3d? A. Yes.

Q. The 3d is the first time that you went up there? A. Yes, sir; first time.

Q. What was done with the piece of flume that Kinzie put in on the 3d? A. What time?

Q. When did he put it in on the 3d?

A. I don't know.

Q. You say you saw him put it in?

A. I don't know.

Q. Did you see him?

A. Yes, I seen him.

Q. Was it in the afternoon or the forenoon?

A. Afternoon he put in that flume.

Q. Well, what time, did you see a piece of flume put in Gold Creek up there on the day of the 3d?

A. Yes.

Q. Who put that in?

A. Most of the men there, six or seven men.

Q. What was done with that piece of flume that was put in on the 3d—what became of it—what was done with that piece of flume—did it stay in there?

A. Yes, it stayed there all right.

Q. What time on the 3d was it put in, the forenoon or afternoon? [781—631]

(Testimony of Eli Mackey.)

A. Afternoon.

Q. What time in the afternoon?

A. I don't remember what time.

Q. Was it dark or light?

A. A little bit dark.

Q. After you ate supper? A. Yes, sir.

Q. After you ate the third meal that day?

A. Yes.

Q. Was there any other piece of flume put in that day before you ate your third meal? A. No.

Q. None put in? A. No.

Q. Now, you put this piece of flume in—where was that put in with reference to the rock that you were drilling on; was it put in above the rock or below the rock? A. Below the rock.

Q. Is that the one that was smashed up?

A. Yes.

Q. Don't you know that there was one put in in the afternoon of the 3d between your dinner-time and your supper-time? A. Afternoon?

Q. Yes, one put in between your dinner-time and your supper-time, wasn't there?

A. After supper?

Q. Wasn't there a piece of flume put in between your second and third meal on the 3d?

A. Third?

Q. What was done with that piece of flume?

A. That was in the water.

Q. Was that broken up? [782—632]

A. Yes.

Q. I will ask you, did you see two pieces of flume

(Testimony of Eli Mackey.)

put in Gold Creek on the day of the 3d of October, or just one piece put in? A. One.

Q. And that was put in only one time?

A. Yes, only one time they put it in.

Q. Only one time? A. Yes.

Q. And was that between your second and your third meal, or after your third meal? A. After.

Q. There wasn't any flume then put in between your second meal and your third meal that day, was there? A. The first flume?

Q. Well, then you did put in some flume or piece of flume between the second and third meal, and then you put in another one after the third meal on the 3d day of October, all in one day?

A. Yes, all in one day.

Q. Were you up there in the evening after your third meal after it was getting dark? A. Yes.

Q. They put in one piece then? A. Yes.

Q. Did you see two logs across the creek?

A. Yes.

Q. Two logs? A. Yes.

Q. Where was the flume that was put in the creek put in, above or below— A. Below.

Q. Below the logs? [783—633] A. Yes.

Q. Now, the logs that were there just two ordinary logs? A. Two little logs.

Q. Not very big? A. No, not very big.

Q. Was the flume tied with a rope fastened on to the logs? A. Yes.

Q. That was the way it was done? A. Yes.

Q. Was there any rock put inside of the dam?

(Testimony of Eli Mackey.)

A. Yes, inside.

Q. The flume was put right in between two rocks?

A. Yes, sir.

Q. Then what was the flume tied to, was it tied to something?

A. The flume, the rock was right in the flume.

Q. Now, where those two logs lay across the creek, was it brushed out there? A. Yes.

Q. Just a little around there? A. Yes.

Q. Was it brushed out, way up across the hill?

A. Oh, yes.

Q. How far? A. Oh, I don't know how far.

Q. Did you go up the hill to see?

A. I see a line there.

Q. What made that line?

A. I don't know who made it.

Q. Do you know when it was made?

A. Mr. Kinzie told me.

Q. Did you see any men making that trail?

A. No, I didn't see that.

Q. The brush that you saw cut around where your logs were and [784—634] where you say you drilled the rock was cut before you went up there on the 3d—it was cut when you got up there, it was all done? A. I don't understand.

Q. Did you see any man on the 3d take his axe and cut down bushes? A. Up the hill?

Q. Anyone there? A. Oh, yes.

Q. Who cut brush on the 3d, who had an axe?

A. That Hill with the Ebner men had lots of rocks down the creek.

(Testimony of Eli Mackey.)

Q. What men of your men cut brush on the 3d?

A. Arthur Krasul.

Q. You went up there with Mr. Kinzie and Henderson—now, that was three men, name some other man who went up there that day?

A. Lots of men.

Q. How many?

A. Six or seven altogether.

Q. Some of the men that went up with you and Mr. Kinzie had axes? A. Yes.

Q. They cut some brush with the axes around where you were working on this rock and where the logs were put in? A. Yes.

Q. Do you know Mr. Harri, the lame man?

A. Oh, yes.

Q. Was Mr. Harri up there that day?

A. No, I didn't see him; I worked down the creek all day.

Q. You didn't see Harri that day? A. No.

Q. How late, what hour did you leave there that night, do you know? Do you know what time you left, what time you come [785—635] down, left the work? A. I guess 9 o'clock.

Q. You went back up there on the 4th, the next day? A. I didn't go back.

Q. You didn't go back? A. No.

Q. When did you go back again?

A. I worked in the tunnel.

Q. When did you next, after the 3d, go back up where these logs were where you were drilling on the rocks—when next did you go back, do you remem-

(Testimony of Eli Mackey.)

ber? A. No, I don't.

Q. Did you go back before Christmas that year?

A. Oh, yes; oh, yes.

Q. Back up to where these logs were? A. Yes.

Q. And where that rock was? A. Yes.

Q. About how long after October 3d, a month?

A. I was around here a couple of months, I worked in that tunnel.

Q. When did you go back up Gold Creek, back up to where these logs were put across the creek on the 3d and where you drilled in the rock—when did you go back to that place in Gold Creek, do you remember how long after the 3d of October?

A. I don't remember.

Q. You were working on down the creek?

A. Yes.

Q. On a tunnel? A. Yes.

Q. For the Alaska-Juneau Company?

A. Yes. [786—636]

Q. When you got through on the tunnel where did you go then—when you quit working on the tunnel, where did you go?

A. Oh, I worked there about two months.

Q. Did you go up to where the logs were and where the rocks were that you did the drilling on in those two months? A. Yes.

Q. About how many weeks after the 3d?

A. I don't remember that.

Q. Then after you worked two months up there you went to work for Mr. Kinzie over across Gastineau Channel—how long did you work for Mr.

(Testimony of Eli Mackey.)

Kinzie, only two months?

A. Oh, I worked a long time.

Q. Working for him now?

A. Yes, I work now.

Q. When did you quit working for Mr. Kinzie, have you been fishing?

A. Yes, I have been fishing this summer; didn't work this summer.

Q. Did you work last winter for him?

A. Last summer.

Q. You have been fishing this summer?

A. Yes.

Q. You worked for him last winter?

A. Yes, I worked last summer for Mr. Kinzie.

Q. Not this summer? A. No.

Q. Where did you work then, over across at Treadwell? A. No, in the Basin.

Judge WINN.—That is all. [787—637]

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. That day, October 3d, you know when I mean—now, did you put in one flume-box or two flume-boxes? A. One.

Q. Only one? A. Only one.

Q. Did you put that in in the afternoon or in the evening? A. Evening.

Q. Did you put in any flume-box in the afternoon?

A. In the evening.

Q. Only one in the evening? A. Yes.

Q. Now, on the morning of October 4th, you didn't go back to work there? A. No.

(Testimony of Eli Mackey.)

Q. Did you see the dam that morning?

A. Yes, I saw that box was broke.

Q. You saw it? A. Yes.

Q. You didn't work there, you worked at the tunnel? A. Yes.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [788—638]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal JOHN B. MARSHALL, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of John B. Marshall, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Have you been sworn, Mr. Marshall?

A. Yes, sir.

Q. You are the United States Commissioner for the Juneau Recording District? A. Yes, sir.

Q. And as such you are also the Recorder?

A. Yes.

Q. And the Recorder for the Harris Mining District? A. Yes, sir.

Q. As such official, have you in your possession and your custody the records of the Harris Mining District? A. Yes.

Q. I hand you here a small book labeled as the minute book of the Harris Mining District—

A. August 1881 to February, 1888.

(Testimony of John B. Marshall.)

Q. Is that one of the records in your custody and control? A. Yes, sir.

Q. And that is one of the records of the District?

A. It is in my possession as such.

Q. Does that contain the minutes of the organization of the Harris Mining District?

A. It contains the minutes of the Harris Mining District. [789—639]

Q. It contains that portion of them relating to the organization of the District? A. Yes, sir.

Mr. HELLENTHAL.—I will first offer in evidence, you Honor, that portion of the record relating to the organization of the Harris Mining District, commencing on what page, Mr. Marshall, and continuing how far?

A. The first page is not numbered, but would be one; it is followed by 2, 3 and so on.

Q. How far Mr. Marshall, does the book relate to the organization of the District?

A. I think that it is from pages 1 to 11.

Q. From pages 1 to 11? A. Yes, sir.

Mr. HELLENTHAL.—I will offer in evidence first pages 1 to 11 of the book referred to.

The WITNESS.—I think that I will have to revise the statement I made in regard to that; those are not the minutes just at that particular place—the meeting being called to order—it appeared to be the minutes, and I thought probably it was, but that is not true; I hadn't examined this book carefully before coming up here to testify to the different portions of it, but it contains here at places what

(Testimony of John B. Marshall.)

purports to be the miners' rules and minutes of proceedings.

Mr. HELLENTHAL.—I will make the offer this way and then it can be segregated afterwards—I offer that portion of the book that relates to the organization of the District.

(Not received in that form because of objection.)

Q. Mr. Marshall, you have testified, I think, that you have in your custody the minutes of the Harris Mining District relating to the organization of the District? A. Yes, sir. [790—640]

Q. Will you describe the book in which that is found, and the page on which those minutes occur?

A. It is found in a book which is labeled, 1880—1881, on the next line A, and the label further says “No. 1, Lode Claims, Placer Claims, Water Claims,” and then there is other writing on there which is not legible.

Q. It is not legible?

A. It is not legible; and on page — it is not numbered in the regular way, but bears O, *or* what apparently are the rules of the organization of the Harris Mining District.

Mr. HELLENTHAL.—I will offer in evidence the minutes of this organization to which the witness has just testified, appearing on this first page of the book previously described by the witness.

Judge WINN.—I want to cross-examine him and then I will make my objection.

The COURT.—Very well, Judge, cross-examine.

Q. (By Judge WINN.) Mr. Marshall, you have

(Testimony of John B. Marshall.)

been appointed United States Commissioner and ex-officio recorder of the Juneau precinct, have you not?

A. They call it a recording district, I think it is designated as a recording district.

Q. It is one of the recording districts that is in the First Judicial Division of Alaska?

A. Yes, sir.

Q. And there is a provision made under the law for the appointment of such an officer, is there not?

A. Yes, sir.

Q. Now, Mr. Marshall, when you say you are the recorder of the Harris Mining District, do you know of the existence of any such organization as the miners of the Harris Mining District?

A. Not to my knowledge. [791—641]

Q. You never have been appointed by any such organization as recorder, have you? A. No, sir.

Q. Never been elected by any such organization as such officer? A. No, sir.

Q. You never have attended any meeting of such an organization, have you? A. No, sir.

Q. You found these records that you are testifying concerning now in the office of the recorder of the Juneau precinct, is that the name of the District?

A. I think the designation is District Recorder; I am the United States Commissioner of the Juneau precinct.

Q. And ex-officio recorder?

A. Ex-officio recorder.

Q. That precinct includes a certain part of the First Judicial Division of Alaska, doesn't it?

(Testimony of John B. Marshall.)

A. Yes, sir.

Q. Includes Juneau and vicinity? A. Yes, sir.

Q. And you found this book that you are testifying concerning among the records of this office that you are testifying about? A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—Let me ask Mr. Marshall a question or two about that. Mr. Marshall, the Juneau Recording District includes within its boundaries the Harris Mining District?

A. As the Harris Mining District is established in that record, yes.

Q. It includes it within its boundaries?

A. Yes, sir. [792—642]

Q. And you are the recorder in whose office is recorded at the present time all the mining claims, water locations, and things of that character in the Harris Mining District? A. Yes, sir.

Q. And have been for some time past?

A. Yes, sir.

Q. And as such recorder you now have in your custody the records of that district? A. Yes, sir.

Q. Now, the Harris Mining District is here described, isn't it?

(Not answered because of objection.)

Q. And as such custodian of those records and as such recorder you have those records in your custody? A. I have.

Q. (By Judge WINN.) You claim that the Harris Mining District boundary lines are coextensive with the boundary lines of the Juneau Recording District?

(Testimony of John B. Marshall.)

A. No, sir; the Juneau boundary lines are much more extensive—that is, they extend farther north, farther east and farther west.

Q. (By Judge WINN.) You don't know anything about how those books happened to be in your vault? A. I have no idea.

Q. (By Judge WINN.) You found them in there? A. Yes.

Q. (By Judge WINN.) They were not turned over to you by any organization of miners, or any officers or people belonging to any such organization?

A. No, sir; they were turned over to me by my predecessor in office. [793—643]

(Questions by the COURT.)

Q. Mr. Marshall, when were you appointed United States Commissioner?

A. July 1st a year ago—that is, I took office at that time; I don't remember the exact date of the appointment.

Q. When did you first come to Juneau?

A. I first came to remain here permanently in July, three years ago.

Q. Who made you the custodian of the records of the mining district—of any mining district?

A. Well, the records were delivered to me by virtue of my appointment to the office.

Q. I didn't ask you who delivered them—who made you the custodian of the records of any mining district?

A. No individual that I know of, or no authority acting at that time.

(Testimony of John B. Marshall.)

(Whereupon said minutes were admitted on the promise of counsel to connect them up, and said minutes were read into the record as follows:

“Harris District.

At a meeting of the miners the discoverers of the Harris District, Discovered on October 4th, 1880, situated in Alaska Terry, about 8 miles North of the Taku River.

The following local laws were adopted by us in the absence of civil or territorial law for the purpose of mining said district consisting of Gold and Silver Gravel Mines and quartz lodes, the quartz lodes situated on Gold Hill emptying into Silver Bow Basin main land and coast range about 4 miles from salt water, and also for quartz mill sites.

Boundary lines of said district, the mouth of the Taku River on salt water to a river named Salmon river north, [794—644] and thence running inland fifteen miles along the coast range, the whole consisting of three large creeks or rivers, north of the Taku River, the first named Sheep Creek, middle or center creek named Gold Creek, and the third named Salmon River, and all their tributaries; the middle creek or river named Gold Creek is our discovery and field of operations.”)

Q. Now, Mr. Marshall, among the records of your office also is another book to which I first directed your attention, called “Minute-Book, Mining District, 1881 to 1888”? A. Yes.

Q. That minute-book contains the rules pertain-

(Testimony of John B. Marshall.)

ing to the appropriation of water within the Harris Mining District? A. Yes.

Q. What pages bear upon that question?

A. Pages 38 to and including the first three lines on page 43.

Mr. HELLENTHAL.—I now offer in evidence, your Honor, the part of this book to which the witness has just referred, relating to the rules of the Harris Mining District covering the appropriation of water.

The COURT.—They will be admitted subject to the promise to connect them up.

(Whereupon said minutes were read into the record as per exhibit No. 30.)

Mr. HELLENTHAL.—That is all.

Judge WINN.—That is all.

(Witness excused.) [795—645]

MORNING SESSION.

July 31, 1914, 10 A. M.

The plaintiff, to further maintain the issues on its part, introduced as a witness CHARLES WELLS, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Charles Wells, for Plaintiff.

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Charles Wells? A. Yes, sir.

Q. When did you come to Alaska, Mr. Wells?

A. The fall of 1880.

(Testimony of Charles Wells.)

Q. When did you come to the Harris Mining District? A. 1881.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. Were you here when the Harris Mining District was organized? A. No, I was in Sitka.

Q. Had you been here before that?

A. I had been here before that, yes.

Q. Do you remember the time it was organized?

A. Yes, sir; I remember the time.

Q. Do you know who the first recorder of the district was? A. Yes, sir.

Q. Who was it, Mr. Wells?

A. Colonel Dixon.

Q. How long was he the recorder?

A. I think he was the recorder up to the time—

Q. Mr. Wells, I hand you here a little pamphlet marked “Local Mining Laws of Harris Mining District,” and ask you to look at that and see if you recognize that? [796—646]

A. Yes, I recognize it and recognize all the people’s names there.

Q. Now, Mr. Wells, do you remember a meeting of the miners of the Harris Mining District in about 1888 when some action was taken looking towards the designation of the United States Commissioner as the mining recorder? A. In 1888?

Q. About 1888.

A. Yes, sir; I was at that meeting myself.

Q. You were at that meeting? A. Yes.

Q. Now, I will ask you the question, Mr. Wells,

(Testimony of Charles Wells.)

what action was taken by the miners of the—that was a regular miners' meeting, was it?

A. Yes, sir.

Q. Called by the miners of the district?

A. Yes.

Q. At that meeting what, if any action was taken by the miners, in your presence, looking towards the designation of the United States Commissioner as the mining recorder?

(Not answered because of objection.)

Q. Do you know, Mr. Wells, whether there was any record kept of that meeting as far as you know?

A. No, I don't.

Q. You don't know? A. No.

Q. Do you know what action was taken by the miners at that time? A. Yes, sir.

Q. Now, I will repeat the question as before.

A. Well, the meeting was for the purpose of seeing whether they would have two recorders or not, and come to the conclusion that there wasn't enough in it for both of them, and they made [797—647] up their minds that they would have to go to the commissioner's office anyhow for the other records, and they might just as well let the commissioner have it and that would pay him a pretty good salary.

Q. Now, Mr. Wells, at that meeting what, if any action was taken by which the commissioner was in the future designated as the recorder of the district?

A. He was designated as the recorder of the Harris Mining District.

Q. Not only the commissioner who was then in

(Testimony of Charles Wells.)

office, but for all future years?

(Not answered because of objection.)

Q. What was the action taken with reference to who should be the recorder of the Harris Mining District in future years? A. The commissioner.

Q. The United States Commissioner? A. Yes.

Q. And how was that to be done, without any further elections or with further elections?

(Not answered because of objection.)

Q. Under the action taken by the miners what, if any, action would be necessary to make him the recorder for future years?

(Not answered because of objection.)

Q. Now, Mr. Wells, pursuant to the steps taken at that meeting concerning which you have testified, what was done with the records of the Harris Mining District—to whom, if anyone, were they turned over—do you know?

A. All my work I had done with the commissioner from then on.

Q. Did you see the records in the commissioner's office after that?

A. Yes, sir; I went there and had recorded myself lots of times affidavits of labor and things of that kind.

Q. Do you remember, Mr. Wells, the safe that was kept by the [798—648] miners at that time?

A. Yes, I helped to pay for that.

Q. What happened to that safe?

A. It was burned at the time the courthouse was burned.

(Testimony of Charles Wells.)

Q. What was done with it after that meeting?

A. It was turned over to the commissioner.

Q. And the records were kept in this safe by the commissioner? A. Yes.

Q. And that safe was kept, I understand, in the possession of the commissioner until the fire here, when it was burned up? A. Yes, sir.

Q. Now, Mr. Wells, certain laws of the Harris Mining District have been introduced here—you knew Judge Delaney in his lifetime? A. I did.

Q. Do you know, Mr. Wells, whether the miners of the Harris Mining District took any action toward the enactment of rules governing the appropriation of water in about the year of '81 or '82?

A. Yes, sir.

Q. Did they take any action governing the appropriation of water? A. Yes, sir.

Q. Now, Mr. Wells, I hand you here—did you know Judge Delaney in his lifetime?

A. I did, in his lifetime.

Q. What was he *going* here?

A. First customs-house collector and judge of the District Court.

Q. Afterwards what business did he follow?

A. Law.

Q. Practiced law? A. Yes. [799—649]

Q. Did you know Mr. W. R. Hoyt? A. Yes.

Q. What was his business?

A. He was the commissioner.

Q. Also recorder? A. Yes, sir.

Q. Do you think you would know his signature if

(Testimony of Charles Wells.)

you saw it? A. I am not sure I would.

Q. Showing you this pamphlet, you *don't whether* that is Mr. Hoyt's signature or not? (Referring to Plaintiff's Exhibit No. 33.) A. I couldn't say.

Q. Calling your attention now, Mr. Wells, to that portion of the little pamphlet I am handing you, marked on the outside "Local Mining Laws of the Harris Mining District," and calling your attention commencing at a point on the 4th page of that little book and continuing up to the 5th and 6th page, I will ask you to look at this, Mr. Wells,—Now, I will ask you whether the laws and rules I have just called your attention to as shown in that little book, how they compare with the laws and rules enacted by the miners of the Harris Mining District in 1881 and '2—whether they are the same?

A. Just about the same now as they were then.

Q. The question was, Mr. Wells, whether those are the same as the laws which were originally enacted? A. Yes, sir.

Q. As shown in this little book? A. Yes, sir.

Q. I call your attention now, Mr. Wells, to the record book that has been offered in evidence, same being the records of the Harris Mining District. I now call your attention to the minute-book of the Harris Mining District, commencing at [800—650] page 38 to the top of page 43, and ask you to look at that and state whether you know if that contains the laws governing the appropriation of water as adopted by the miners of the Harris Mining District?

(Testimony of Charles Wells.)

(Not answered because of objection.)

Q. Mr. Wells, are you familiar with the rules of the Harris Mining District as they were adopted in 1881 and '82 by the miners of that district?

A. Yes, sir.

Q. Governing the appropriation of water?

A. Yes, sir.

Q. Now, calling your attention to the rules as they appear in the minute-book of the Harris Mining District, marked August, 1881, to February, 1888—calling your attention to those rules as they appear on pages 38, 39, 40, 41, 42 and part of 43 of that book, I now ask you how those compare with the rules as they were in existence and adopted and observed by the miners at that time?

(Not answered because of objection.)

Q. Do you know, Mr. Wells, what rules were adopted and what laws were in force at that time, 1881 and '82, by the miners of the Harris Mining District? A. I do.

Mr. HELLENTHAL.—Now, I will have these rules read into the record—I mean the rules from page 38 to the top of page 43 of the Minute-book of the Harris Mining District, August, 1881, to February, 1888, being Plaintiff's Exhibit No. 30.

Judge WINN.—This is read into the record subject to my objection.

(Whereupon said rules were read as follows:)

“Harris Mining District, Feb. 18, 1882.

An adjourned meeting of the miners of this District was held in the house of Wm. Newcomer @

2 o'clock P. M. Minutes of the meeting of Feb. 8th read and approved. Committee appointed at the previous meeting [801—651] to report amendments to the present code of laws governing water rights, etc., made the following reports: Majority report. We, the undersigned committee, appointed by the chairman, (Mr. T. A. Willson) of the annual meeting of the miners of Harris Mining District for the purpose of draughting amendments to the present mining laws of the District, to report to an adjourned meeting to be held at the residence of W. H. Newcomer on the 18th February, 1882, have the honor to respectfully submit the following for ratification:

Article 1st. Section 1st. The right to use the running water flowing in a river or stream or down a cañon or ravine, may be acquired by appropriation.

Article 2nd. The appropriation must be for some useful or beneficial purpose and when the appropriators or his successor in interest ceases to use it for such a purpose, the right ceases.

Article 3rd. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe or aqueduct by which the diversion is made to places beyond that where the first use was made.

Article 4th. The water appropriated may be turned into the channel of another stream and mingled with its water and then reclaimed, but in reclaiming it the water already appropriated by

another must not be diminished.

Article 5th. As between appropriators, the one first in time is the one first in right.

Article 6th. A person desiring to appropriate water must post a notice in writing, in a conspicuous place at the point of intended diversion, stating therein:

First: He claims the water there flowing to the extent of (giving the number) inches, measured under a four inch pressure. [802—652]

Second: The purpose for which he claims it and the place of intended use.

A copy of the notice must within ten (10) days after it is posted, be recorded in the Books kept by the Recorder of the District.

Article 7th. Within twenty days during the working season after the notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently, and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Article 8th. By "completion," it is meant conducting the *the* waters to the place of intended use.

Article 9th. By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.

Article 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.

Article 11th. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes effect and within twenty days thereafter proceed as in this title provided, or their right ceases."

Mr. HELLENTHAL.—I will now introduce the other pages of this record that was omitted previously, the action taken upon this report of the Committee that has just been read.

(Whereupon pages 44, 45 and part of 46 of the minute-book were read in evidence as follows:)

"It was moved that the reports of the committee be considered by sections, carried.

The majority report was then taken up. [803—653]

Section 1st. Articles First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Eleventh were adopted as read. Article Sixth was amended so as to read "six-inch pressure" instead of four-inch pressure.

Section 2d. Articles First and Second were adopted as read. Article Third was amended by adding "and the Recorder when serving shall receive the same pay as arbitrators."

The minority report was then taken up and the following adopted as Article 12 of Section 1st of the Amendments:

"When a party has a prior location to a ditch, he is entitled to protection on said ditch, to prohibit

(Testimony of Charles Wells.)

parties from injuring said ditch by dumping tailings.

On motion the reports adopted as a whole, as amended.

On motion, meeting adjourned.

R. T. HARRIS, Secretary.

T. A. WILLSON, Chairman."

Q. Now, Mr. Wells, let me ask you a couple more preliminary questions. What business have you followed since coming to Alaska? A. Mining.

Q. In the same District, Harris Mining District?

A. Yes, sir.

Q. You are the man that located the group of claims that is now referred to as the Ebner group?

A. Yes, sir.

Q. You located those claims in what year?

A. On the 6th day of December, 1880.

Q. 1880? A. Yes.

Q. And you have been locating and operating mines here ever since? A. Yes, sir.

Q. Now, you have heard the rules governing the appropriation of [804—654] water as shown by the minute-book of the Harris Mining District as read in evidence? A. Yes, sir.

Q. Do you know whether those rules were generally observed by the miners of the Harris Mining District, commencing immediately after their passage? A. Yes, I know them well.

Q. Do you know whether they were observed?

A. Yes, I do.

Q. Were they or were they not generally observed by the miners of the Harris Mining District?

(Testimony of Charles Wells.)

A. They were.

Q. Do you know whether those rules as read in evidence and as adopted and observed have been generally observed by the miners from that time ever since to the present time—the first question is whether you know or not? A. I do.

Q. Now, Mr. Wells, were they so generally observed by the miners of the Harris Mining District from the time of the first enactment up to the present time?

A. They were, so far as my knowledge goes; I observed them myself and everybody else I know observed them.

Q. Was there ever any action taken by the miners of the Harris Mining District in anywise changing or modifying the laws as just read in evidence?

A. The Harris Mining District?

Q. Yes. The information I am trying to elicit is whether the miners ever modified or changed these rules? A. Not to my knowledge.

Q. Was there ever any change made by the miners of the district in these rules?

A. Not to my knowledge.

Q. Are you familiar with the customs of the district as well as [805—655] the rules? A. Yes.

Q. Are there any customs in the Harris Mining District that are observed by the miners that are in conflict with these rules, that are different from the rules?

(Objection and question withdrawn.)

Q. Mr. Wells, has there ever been, in the Harris

(Testimony of Charles Wells.)

Mining District since the enactment of these rules up to the present time, any custom among the miners that was observed by the miners of the district under which an appropriation of water could be made so as to date back to the time of the notice—any other manner except by following these rules?

(Not answered because of objection.)

Q. I call your attention, Mr. Wells, to a little pamphlet, marked on the outside "Local Mining Laws of Harris Mining District, Alaska, Published by John G. Heid and G. W. Garside, Juneau, Alaska." I will ask you if you have seen that pamphlet before or a similar pamphlet? (Referring to Plaintiff's Exhibit No. 34 for identification.)

A. I don't think I have.

Q. Don't remember that one; do you remember seeing pamphlets of a like character?

A. I seen something similar to it, but not the same.

Q. Can you say whether these pamphlets were in the hands of the miners about the territory?

A. Yes.

(Answer stricken and objection to question sustained.)

Q. I hand you another pamphlet, called the "Local Mining Laws of the Harris Mining District, Alaska," and ask you to look at that. (Referring to Plaintiff's Exhibit No. 33 for identification.)

A. Yes, I have seen that.

Q. Have you seen copies of that pamphlet in general use among [806—656] the miners?

(Not answered because of objection.)

(Testimony of Charles Wells.)

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. When did you say, Charlie, that you first came to Alaska? A. When did I first come to Alaska?

Q. Yes. A. Seventy-four.

Q. When did you first come to Juneau and vicinity? A. Fall of eighty.

Q. Fall of 1880? A. Yes.

Q. When was the first meeting that you attended of this so-called Miners' Organization? A. 1888.

Q. 1888? A. Yes.

Q. They had been having meetings prior to that time you didn't attend?

A. Yes, I was in Sitka; I left here, I think, the 8th or 9th of December and went back to Sitka, in the fall of '80.

Q. How many meetings of this so-called organization did you attend yourself?

A. That is all I attended.

Q. One in 1888? A. Yes.

Q. You have been living in and about Juneau and vicinity since '88?

A. Yes, I have been living here since the 4th of April, 1881. [807—657]

Q. I want to confine it to this particular meeting that you attended. Where was this meeting held that you attended?

A. Well, now, that I cannot say; there was three places here they held meetings, and whether it was down there in what they called the Levy building,

(Testimony of Charles Wells.)

or over here at Joe Swan's—that vacant lot now right in front of the Odd Fellow's hall, on this side—or whether it was in the opera house, I cannot say.

Q. You remember attending a meeting at that time but you don't know where it was held?

A. No—that is, I cannot tell exactly where it was held; they were held all over then wherever they could get a room.

Q. I want you to designate the building and where it was, if you can remember?

A. I cannot exactly say where it was.

Q. How many people were present at that meeting?

A. Oh, I suppose there was a hundred, somewhere around that.

Q. Was there any meeting ever called after that meeting of the miners of this so-called organization?

A. Not that I know of, not for that purpose.

Q. Did that organization that you attended then have any record-books? A. That I couldn't say.

Q. Did they have any secretary, or such officer at that meeting?

A. Yes, there was a secretary there.

Q. Have you ever looked over the books that have been offered in evidence in this case, which purport to be the minutes and records of this organization—have you read through them?

A. I have through this little pamphlet.

Q. I don't mean the pamphlet; I mean the record-books that have been identified here from which Mr. Hellenthal read? A. Only when it was read to me.

(Testimony of Charles Wells.)

Q. Do you know whether or not there was any record made of anything [808—658] that transpired at that meeting of '88?

A. That I couldn't say.

Q. Is that the meeting that you stated to Mr. Helenthal that certain proceedings were had at that time?

A. That was the meeting that the miners made up their minds that there wouldn't be two recorders.

Q. Now, there was no record ever made of any resolution having been passed? A. What is that?

Q. No record was made of anything that was ever done at that meeting, was there?

A. I don't know if it was put on record or not; the records were in that safe and the courthouse was burned down.

Q. You never did see any written record that was made at this meeting, did you?

A. No, I didn't see it.

Q. Who was acting as president or chairman of that meeting, and who was acting as secretary?

A. It is pretty hard for me to tell; it was a long time ago.

Q. You don't know? A. No, I don't.

Q. Who made any motion there at that time, Charley? A. I think Mr. McGlinchy was one.

Q. Who? A. Mr. McGlinchy.

Q. Have you ever seen any record of any motion that Mr. McGlinchy made?

A. No, only in that little pamphlet.

Q. I mean in the Juneau records.

(Testimony of Charles Wells.)

A. No, not from the records.

Q. You don't know whether there is any record in these books, or not, of the 1888 meeting? [809—659]

A. I couldn't say.

Q. Who else made a motion?

A. His motion was adopted.

Q. You don't remember who the secretary was?

A. No, I don't know whether it was Willson, or who it was.

Q. Now, I wish you would state just the exact language in which this motion was made in 1888—the language he stated his motion in?

A. He moved and somebody seconded that they would vote for one recorder in place of two, that there wasn't enough money in it for two, and it would pay one.

Q. Had you been paying one prior to that time?

A. Yes, sir; we had to pay one—that is, every time we would go to the office we had to pay for it.

Q. You have stated that motion as well as you remember it, Charley, have you? A. Yes.

Q. Who was the United States Commissioner at that time? A. '88—I think it was Mr. Hoyt.

Q. Did you ever pay him anything for acting as recorder? A. Yes, I have.

Q. How much a month did you pay him?

A. I didn't pay him by the month; I paid him for my work; whenever I had anything recorded I paid him.

Q. You paid the recording fees? A. Yes, sir.

Q. That was the United States Commissioner that

(Testimony of Charles Wells.)

had been appointed under the civil law as it had been extended to Alaska? A. Yes.

Q. And you paid the recording fees to him?

A. Yes—affidavits of labor—

Q. You paid him just like you would pay a United States Commissioner, didn't you—there was no difference? [810—660] A. For recording claims.

Q. The same as paying for recording deeds—

A. Just the same.

Q. Or any other papers that were going on record with the United States Commissioner?

A. Yes, I suppose it was the same.

Q. How many location notices did you ever record of your own with this Recorder Hoyt?

A. How many location notices?

Q. Yes, of your own. A. Water?

Q. Yes. A. One.

Q. When was that—about what date did you record a location notice?

A. Down on the Snettisham Peninsula.

Q. That was a location notice of water down on Snettisham peninsula?

A. Yes, sir; out of the Harris Mining District.

Q. Outside of what you understood to be the Harris Mining District? A. Yes, sir.

Q. What date was that, approximately; what date approximately did you make any such record of a notice?

A. I couldn't say, now, Judge, what date it was; I think you will find it on record here.

(Testimony of Charles Wells.)

Q. That is the only location of water that you ever made?

A. I have helped Mr. — to make another one up here on the Ebner property.

Q. Did you ever make another water location notice in your own name since the one you have just stated you made? A. Not in my own name.

Q. Since 1888 you have made one water location, and then that was outside of the Harris Mining District as you contend? [811—661] A. Yes.

Q. And you filed that water location notice that didn't have any date upon it—you don't know what time you filed it or what time you posted it?

A. It had a date on it.

Q. You think it had a date and a date of posting?

A. Yes, you will find it in the records; Judge Delaney made out the notice.

Q. Was it before 1888 or after that you recorded that notice? A. It was after.

Q. Now, I understand you to say that you have only made one water location notice in your own name? A. That is all.

Q. Since '88? A. Since '88.

Q. And that is all. A. That is all.

Q. How many did you make prior to '88?

A. I helped my partner to make two.

Q. How many did you make in your own name prior to '88?

A. I didn't make any in my own name.

Q. Did you miners at this meeting, and the last meeting which you ever had, in '88, fix any fees that

(Testimony of Charles Wells.)

the United States Commissioner should charge for recording any mining location or water right notices? A. I think there was.

Q. Well, now, what do you know about that; did you at that meeting that you attended establish any fees that the United States Commissioner should receive for recording water location notices?

A. Yes, sir.

Q. You did? A. I think we did; yes. [812—662]

Q. What fees did you establish?

A. I think it was \$1.50 a claim.

Q. Don't you know that the United States provided what recording fees could be charged; what the commissioner can charge for recording?

A. Don't I know? Well, it was pretty hard to put a commissioner in charge of the recording when there was none here.

Q. Do you say that Hoyt charged these fees for recording for the reason that he was recorder of the mining district, or for the reason that he was United States Commissioner and had a right to charge them?

A. I don't know what right he had or what right he didn't have; he charged me \$1.50.

Q. Yes, and the United States Commissioners have always charged \$1.50, haven't they, or don't you know? A. I don't know; I suppose they did.

Q. Now, Charlie, how many other people do you know of your own knowledge, not what they have told you, that filed water location notices between 1880 and 1888 that complied with the local rules and

(Testimony of Charles Wells.)

regulations that you have testified concerning.

A. Well, as far as that is concerned, all that I come in contact with complied with them.

Q. I don't want to know what they have told you—

A. I didn't say that; you asked me if I knew, not if anybody told me.

Q. Charlie, you have been pretty active in getting up testimony, haven't you, for the Alaska-Juneau Company in this case?

A. Yes, and I have been very active for you, too, up here, Judge.

Q. How long have you been on the pay-roll of the Alaska-Juneau Company?

A. I have never been on the pay-roll in my life; I could be on your pay-roll if I wanted to. [813—663]

Q. How long have they had you going around looking up evidence of the custom that has prevailed—

A. I haven't been going around getting up evidence.

Q. Haven't you been going around amongst the old miners—

A. I have been going around asking some of my friends if they were subpoenaed.

Q. You were engaged by the Alaska-Juneau Company to do that?

A. I wasn't engaged, I was subpoenaed.

Q. And just on that subpoena you went around and tried to find other people who would testify in the same way that you were going to testify?

A. No more than you tried to find me yourself.

(Testimony of Charles Wells.)

Q. Did I ever speak to you—

A. You got your friends to speak to me.

Q. Now, answer the question, Charley; I only asked you a plain question—how long has it been since the Alaska-Juneau Company had you subpoenaed here?

A. They never employed me at all; they subpoenaed me to come here.

The COURT.—You didn't pay attention to the question; the question was, how long since they had you subpoenaed?

A. They subpoenaed me about two weeks ago, or three weeks ago.

Q. Since that time you have been quite active in going around and seeing if there were any other people in this community who would testify in keeping with what you thought to be the rule?

A. No more than any other witness that is interested in it; I consider a man is interested when he is subpoenaed.

Q. How many people have you asked about what they would testify concerning these rules and regulations since that subpoena was served upon you to come here as a witness? A. Not a one. [814—664]

Q. Not a one? A. Not a one.

Q. Now, of your own knowledge how many people do you know in all respects complied with the local rules pertaining to the location of water rights in locating water between the years of 1880 and 1888?

A. Why, I don't know.

(Testimony of Charles Wells.)

Q. Have you ever examined the records between the years of 1880 and 1888 to ascertain how many people in the Harris Mining District complied with these local rules and regulations with respect to making water locations?

A. I haven't; I know it is customary when you want the records examined to pay for it.

Q. You cannot call the name of any one particular person who you know of your own knowledge, between the years of 1880 and 1888, complied in all respects with these local rules and regulations?

A. Yes, I can with one company.

Q. You can with one company—who was it?

A. Harkrader, Coon and Kernon in the basin.

Q. You know of your own knowledge—

A. That they complied with the rules.

Q. Between 1880 and 1888? A. Yes.

Q. Do you have any idea how many water locations were filed between the years of 1880 and 1888?

A. No, I haven't.

Q. Then, with your knowledge as you have given it now, without ever examining the record to see how many water location notices were filed in conformity with these rules, you are willing to testify that it was the general custom between 1880 and 1888 to file water location notices [815—665] in conformity with these so-called Miners' rules and regulations?

A. They had to live up to the rules; I had to.

Q. Supposing the records would disclose the fact that they didn't do it?

(Testimony of Charles Wells.)

A. If they didn't do they would lose out.

Q. You never examined the records to find out, did you?

A. That was the laws or custom—rules and regulations.

Q. You never examined the records to ascertain whether they observed those rules between 1880 and 1888, did you?

A. Never had any occasion for it.

Q. Mr. Wells, did you ever testify on this same question in any other case in court?

A. No, sir; I never did.

Q. You have never been called upon to testify concerning these rules and regulations in any other case? A. No, sir.

Q. Have you examined the records or record-books since 1888 down to the year of 1910 to ascertain whether or not the people generally conformed to these so-called Miners' Rules and Regulations with respect to water location notices?

A. No, sir; I know I conformed to them myself.

Q. But you haven't filed but one, have you?

A. That is all, and I lived up to the laws in that one; made half a dozen but never recorded them.

Q. You made half a dozen water location notices, but never recorded them? A. No.

Q. You think that so far as the one that you made out and filed was concerned that you conformed with the law?

A. No, I don't think that—I say I lived up to the law in that.

(Testimony of Charles Wells.)

Q. The one that you made out, and which was in your own name, was posted outside of the Harris Mining District?

A. Yes, sir; it was. [816—666]

Q. There wasn't any need of conforming to the rules then?

A. We had rules all around down there.

Q. You never have filed a water location notice in your own name in the Harris Mining District, have you?

A. No, but my partner did.

Q. Who was your partner?

A. J. D. Sagemiller.

Q. When did he file any location notice?

A. I think it was along in '83 or '84.

Q. Do you know whether or not he conformed with the Miners' Rules and Regulations in the filing of his notice?

A. He didn't have any occasion—there wasn't much use for anybody to conform to it.

Q. He didn't conform to it?

A. He did.

Q. Did you ever examine the record to see when that notice was recorded?

A. No, I didn't; there was no occasion for it; he recorded that notice.

Q. Do you know what time he recorded it with respect to the time of the posting?

A. No, I don't.

Q. Do you know when he commenced work on it?

A. He was a very particular man—

Q. I am asking you what you know of your own knowledge; do you know that he commenced work

(Testimony of Charles Wells.)

on it, of your own knowledge, within the time prescribed in the rules? A. Yes.

Q. What time did you start to work with respect to the time of posting and filing?

A. About ten days after the notice was on record we started to work on the ditch so we could get our flume in.

Q. You didn't record that notice yourself?
[817—667] A. I did not.

Q. Your partner recorded it? A. Yes.

Q. You don't know of your own knowledge that he recorded it, do you?

A. I know of my own knowledge—I know he recorded it.

Q. His name was Sagemiller?

A. J. D. Sagemiller.

Q. Now, how long was he a partner with you, Charlie? A. About eight or nine years.

Q. Did you and he locate any other water rights together? A. No; there was none on our claim.

Q. These two water rights are the only two water rights that you ever were personally interested in that you located since the year 1880?

A. They were—that was all of it.

Q. The miners of this so-called organization never have had a meeting of any kind or nature as an organization since 1888, have they?

A. Not that I know of.

Judge WINN.—That is all, Charlie.

(Testimony of Charles Wells.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Have you ever known, Mr. Wells, of anyone claiming or locating a water right in any other way except by following the miners' rules?

(Not answered because of objection.)

Q. Did you say you had located or posted a notice that had not been recorded?

A. I posted three or four.

Q. When those notices were not recorded did you claim the water after the date of recording had expired? [818—668]

(Not answered because of objection.)

Q. The question I am asking now, Mr. Wells, is whether you claimed any water right in the streams that you posted a notice on that you didn't record?

A. No, sir; I never did.

Q. What is the reason you didn't?

A. The reason was I didn't think I needed it.

Q. Didn't think you needed the water; the reason you didn't record it you didn't think you needed the water and let it lapse? A. Didn't need it.

Q. Do you know the boundaries of the Harris Mining District as established by the miners at that time? A. Yes, sir.

Q. Where were the boundaries?

A. I knew that before I ever seen the books.

Q. Do you know the boundaries of the Harris Mining District? A. Yes, sir; I do.

Q. Are Gold Creek and the properties of the

(Testimony of Charles Wells.)

Alaska-Juneau Company and those of the Alaska-Ebner Company and the Ebner Gold Mining Company, and properties in that vicinity—are they in the boundaries of the Harris Mining District?

A. They are.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.)

(Whereupon court adjourned until 1:30 P. M.)

[819—669]

AFTERNOON SESSION.

July 31, 1914, 1:30 P. M.

Mr. HELLENTHAL.—Since introducing the minutes of the miners of the Harris Mining District on yesterday, I find that the District was at a little later date reorganized and the boundaries somewhat extended and I offer the minutes of the Harris Mining District in evidence upon that subject as they appear upon page 66 and part of page 67, of the records; the minutes bear date of February 9, 1881.

The COURT.—I understand, Mr. Hellenthal, that this part that you offer now are the minutes of a subsequent meeting to the minutes offered in evidence yesterday, and the pages you now offer in evidence relate to the so-called Harris Mining District?

Mr. HELLENTHAL.—This is a subsequent date to that offered yesterday and is prior to the adoption of the rules regulating the use of water, and it is subsequent to the original organization of the District and relates to the organization of the District

and extends the boundaries from Taku Inlet up to Auk Village.

This will be exhibit No. 32, and I offer No. 32, to consist of pages 66 and 67—not all of 67—page 66 and page 67 up to a point referring to the Second Article, a little below the center of that page, as being the written record of the organization of the Harris Mining District under date of February 9, 1881.

The COURT.—The record offered will be admitted subject to its being connected.

Mr. HELLENTHAL.—It will be understood that the record I am offering is part of the same book that Mr. Marshall identified yesterday.

(Said exhibit No. 32 was read in evidence as follows:)

“Harrisburg, Feb. 9, 1881. An adjourned meeting of the miners of Harris District was convened at the house of P. McGlinchy at 12:30 P. M. [820—670]

The minutes of the previous meeting were read and approved.

The following preamble and resolution was then read by T. A. Wilson and passed:

Whereas, None but *bona fide* American citizens have a right to participate in making laws for the government of American citizens, and but few of those present being able to prove their citizenship,

Therefore, be it resolved that as a proof of citizenship, all persons wishing to participate in this meeting be required to make oath to the same before an

officer competent to administer oath.

The following resolution was then passed:

Resolved: That it is the wish of the miners present that Lieutenant Commander C. H. Rockwell, U. S. N., be requested to administer the oath that they are citizens of the United States, to those who desire to take the same.

Lieutenant Commander C. H. Rockwell then administered the following oath to the following named persons:

"I solemnly and sincerely swear that I am an American citizen, so help me God." Then follows the names—"Geo. E. Pilz, Hugh Campbell, John Dix, T. A. Wilson, M. H. Gibbons, James Rosewall, Frank McMahon, J. Thompson, S. Lewis, C. Brown, J. H. Turnbull, J. D. Sage Miller, C. W. Forrest, M. Dunn, J. T. Kernon, W. M. Bennett, J. A. Ring, R. Dixon, John Prior, M. J. Hibbard, Henry Coon, Jas. Fallon, F. Martin, D. Foster, M. Hosford, John Olds, J. McKinnon, J. B. Newton, W. Pierce, J. O. Nicholson, N. R. Usher.

The committee appointed at the previous meeting to draft a code of laws for the government of this mining district, presented the following preamble and laws which were adopted:

Whereas, Valuable mines having been discovered by Richard Harris and Joseph Juneau on the mainland of Alaska, during [821—671] the month of October, 1880, and no legal code of local laws having been made, the miners residing near these discoveries now think it prudent to have a code of local

(Testimony of George Harkrader.)

laws in accordance with the custom of miners and the laws of the United States, do now enact the following articles:

Article I. This mining district shall be called the Harris Mining District, and its boundary lines shall be as follows, viz.: Commencing at the Auk Indian village and running northeast true to the boundary line of Alaska and British Columbia, thence along said boundary line to where it intersects the Takou River, thence down the Takou River and Takou Inlet to Stephen's Passage, thence along the Stephen's Passage, to point of beginning." [822—672]

The plaintiff, to further maintain the issues on its part, introduced as a witness, in rebuttal, GEORGE HARKRADER, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of George Harkrader, for Plaintiff
(in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is George Harkrader?

A. Yes, sir.

Q. You live in Juneau? A. Yes, sir.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. You say you do know where the Harris Mining District is? A. Yes, sir.

(Testimony of George Harkrader.)

Q. When did you come to the Harris Mining District, Mr. Harkrader? A. First of April, 1881.

Q. How long have you resided in the Harris Mining District—ever since?

A. Yes, sir; some twenty-three years.

Q. What has been your business in a general way since then—your principal business?

A. Mining.

Q. In that connection, have you had occasion to appropriate water and build ditches?

A. I did; yes, sir.

Q. Within the Harris Mining District?

A. Yes.

Q. You are the same Harkrader that built the original Harkrader ditch in Silver Bow Basin, are you not? [823—673] A. Yes, sir.

Q. When was that built?

A. Part of it was built in '81, and part in '82.

Q. You have made other water locations besides that, haven't you?

A. I think I have; I wouldn't be sure on that question; I think we made two more in Silver Bow Basin.

Q. Silver Bow Basin is in the Harris Mining District, isn't it? A. Yes, sir.

Q. You know where the Alaska-Juneau mines, the Ebner property and Gold Creek are? A. Yes, sir.

Q. Those localities I have mentioned are all in the Harris Mining District, are they?

A. Yes, sir.

Q. Silver Bow Basin and the Gold Creek canyon

(Testimony of George Harkrader.)

throughout? A. Yes, sir.

Q. Now, Mr. Harkrader, do you know when the Harris Mining District was first organized?

A. I cannot say; it was in '81 some time, but I cannot say the exact date.

Q. Some where around that time?

A. Yes, sir.

Q. Do you recall the adoption of rules regulating the appropriation of water and the acquisition of water rights by the miners of the Harris Mining District in '81 or '82, or somewhere in the early '80's? You recall that that was done?

A. I do; I wasn't at the meeting that I remember of; I might have been there, but my impression is such that I cannot swear that I was there.

Q. But you recall the adoption of such rules?

A. Yes, sir. [824—674]

Q. Do you know whether the miners of the Harris Mining District had rules that were observed governing those matters to which I have just referred—do you know whether they had such rules?

A. Yes, sir; they did.

(All after the word "Yes" in the answer stricken.)

Q. Did the miners of the Harris Mining District have rules governing the appropriation and acquisition of water? A. Yes, they did.

Q. Now, do you recall a meeting of the miners of the Harris Mining District, a miners meeting, some time in the latter part of the year of 1888 when action was taken in connection with the designation of the United States Commissioner as the future re-

(Testimony of George Harkrader.)

corder of the mining district?

(Not answered because of objection.)

Q. Do you recall any action being taken by the miners of the Harris Mining District at a meeting in the year of 1888—I think the latter end of that year—in connection with the designation of the United States Commissioner as the recorder of the mining district? A. I remember of the meeting.

Q. Do you know what action was taken at that meeting?

(Objection and question reframed.)

Q. Do you know whether there was any written records kept, Mr. Harkrader, of that meeting?

A. I do not.

Q. Do you remember being at that meeting Mr. Harkrader?

A. I couldn't swear that I was at the meeting; I think I was there but I couldn't swear to it.

Q. Do you think you were there but you couldn't swear to it? A. No, sir.

Q. You remember of a meeting being called for the purpose of [825—675] taking action upon that subject by the miners of the Harris Mining District? A. I do.

Q. You remember a meeting was held subject to that call? A. Yes, sir.

Q. Now, what action did the miners take after that meeting with reference to turning the records over to the commissioner, if any?

(Not answered because of objection.)

Q. What did the miners do after the meeting in

(Testimony of George Harkrader.)

connection with the turning over of the records to the commissioner?

The COURT.—What did they do, if you know?

A. They turned the records over to the commissioner, and the commissioner was the recorder thereafter.

Q. The commissioner was the recorder of the Harris Mining District? A. Yes, sir.

Q. The records were turned over—was there a safe or anything that went with the records, Mr. Harkrader?

A. There was a safe belonging to us miners.

Q. Turned over to the commissioner for the keeping of the records?

A. It was turned over to the commissioner; it was a safe that belonged to the miners of the district here, and it was turned over to the commissioner to keep the records in, and they were kept in it until the safe got burned—until the courthouse got burned down and the records got badly burned.

Q. The records at that time, however, were preserved in the safe, most of them?

A. As far as I know they were.

Q. The safe was destroyed but not the records that were in the safe? A. Yes. [826—676]

Q. Now, Mr. Harkrader, you have heard read into the records this morning, haven't you, the rules of the Harris Mining District read from the record while the witness Wells was on the stand?

A. Yes, sir.

Q. How do those rules as read into the record com-

(Testimony of George Harkrader.)

pare with the rules that were in existence and observed by the miners in the early days of '81 and '82?

(Not answered because of objection.)

Q. Do you know where the rules were recorded that were adopted in '81 and '82 by the miners?

A. No, sir; I don't.

Q. Do you know whether they were made a part of the records of the recorder's office?

A. I couldn't say as to that whether they were or not; there were printed pamphlets of the rules.

Q. You have seen those?

A. I have seen a few of them.

Q. I hand you now a pamphlet, marked for identification Plaintiff's Exhibit No. 33, and ask you to look at it and state if that is one of the printed pamphlets to which you refer?

A. Yes, sir; it is one of them.

Q. Does that pamphlet contain the rules of the Harris Mining District governing the appropriation of water and the acquisition of water rights?

(Question reframed because of objection.)

Q. Does that pamphlet contain the rules generally observed by the miners of the Harris Mining District between the years of 1881 up to the present date?

A. It does.

Q. What part of the pamphlet, Mr. Harkrader, contains the rules governing the appropriation and acquisition of water and water rights, commencing on which page? [827—677]

The COURT.—The pages are not numbered, are they, Mr. Hellenthal?

(Testimony of George Harkrader.)

Mr. HELLENTHAL.—I will just offer the whole book.

Q. I will ask you now, Mr. Harkrader, whether the rules governing the appropriation of water, as they appear on the 4th, 5th, 6th, and 7th pages of this little pamphlet, Plaintiff's Exhibit No. 33, are the identical rules that have been generally observed by the miners of the Harris Mining District from 1881 to the present time?

A. They are, to the best of my knowledge.

Q. And have been enforced in the district during that period? A. Yes, sir.

Q. Did you know Judge Delaney in his lifetime?

A. No, sir.

Q. Do you remember when Judge Delaney and Mr. Gamel were partners here in the practice of law?

A. Yes, sir.

Q. About what time was that, Mr. Harkrader?

A. '87 or '88, I think.

Q. Were they also partners in 1891, do you remember, Mr. Harkrader?

A. I could not say if they were partners at that time or not; they were in partnership quite awhile.

Q. Do you remember Mr. Hoyt? A. I do.

Q. What was his position here?

A. He was commissioner.

Q. United States Commissioner? A. Yes, sir.

Q. Do you remember whether he was commissioner here in the year of 1891?

A. I do not. [828—678]

Mr. HELLENTHAL.—I now offer this little

(Testimony of George Harkrader.)

pamphlet, exhibit No. 33 for identification, in evidence.

The COURT.—The book that was marked Plaintiff's Exhibit 33 for identification will be received on this theory—not as the official statement of anything, but simply the testimony of this witness that certain pages which he has pointed out contain the rules that were actually observed.

(Whereupon said pamphlet was received in evidence and marked Plaintiff's Exhibit No. 33.)

Mr. HELLENTHAL.—I think you may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. How many water locations, Mr. Harkrader, have you made since you have been in Alaska?

A. Well, I am not certain about that; I know I made two—that is, myself and partners.

Q. You remember of having made two?

A. Yes, sir.

Q. When did you make your first water location?

A. It was in the fall of '81.

Q. In the fall of 1881? A. Yes, sir.

Q. Where did you make that water location?

A. Way up at the head of Silver Bow Basin on what is *called Creek*.

Q. You located that in your name?

A. No, sir; there was three partners of us in there.

Q. Did you make the location yourself or did one of your partners make it?

A. I helped one of my partners to make it.

(Testimony of George Harkrader.)

Q. When you say you helped one of your partners to make it, what do you mean? [829—679]

A. We got a stake and drove it to put the notice on, and then we consulted one another in writing up the notice.

Q. Do you remember what you put in that notice?

A. Something near it.

Q. What do you remember you put in the notice?

A. Well, we stated in the notice the number of miner's inches of water we were going to divert from the creek, and also where we were going to take it and for what use it was going to be used for.

Q. Where were you going to take it?

A. Down to the main basin, somewhere near where the Alaska-Juneau mill is.

Q. That was in 1881? A. Yes.

Q. Is that one of the water locations that Mr. Wells testified concerning this morning—was he interested in it? A. No, sir; he was not.

Q. Charley Wells wasn't interested in that location? A. No, sir.

Q. Did you post that notice yourself, or did you and you partners together post it?

A. I don't know which one of us posted it; we was both together when it was posted.

Q. Did you record it yourself personally?

A. I think my partner recorded it.

Q. You think your partner took it down to the recorder? A. Yes, Mr. Williams.

Q. Where was the recording office in 1881?

A. Some little cabin here in town; I couldn't tell

(Testimony of George Harkrader.)

you now where it was; Mr. Dixon was the recorder.

Q. Now, when did you make the other location that you spoke of—I mean your own individual locations, or you and your partner's I don't mean somebody's else? [830—680]

A. I couldn't tell definite about when we did make them; as my memory serves me we made one at the head of Snow Slide gulch up on the side of the mountain.

Q. Did you ever record that one?

A. I couldn't say; if my memory serves me right we did.

Q. What year was that?

A. It might have been '85 or '86.

Q. '85 or '86—1885 or '86?

A. Yes, I couldn't say as to that.

Q. Those are the only two that you have been personally interested in or that your name was on, that you located?

A. I think we made another location on Dixon gulch.

Q. Dixon or Woods gulch up in Gold Creek?

A. Dixon gulch.

Q. Where is that, Mr. Harkrader?

A. It goes into Specimen gulch about, maybe, 2,000 feet above Nowell's placer claim there; approximately that I will say.

Q. Above the Nowell's placer claim?

A. Yes, sir.

Q. When was it you made that location?

A. I couldn't tell you that; I couldn't tell you what year it was in.

(Testimony of George Harkrader.)

Q. Was it prior to 1888 or since 1888?

A. I wouldn't be certain we made it, but if my recollection serves me right we did.

Q. If you ever made such a location, did you record it? A. I presume so, I couldn't say it.

Q. If the record doesn't show any such notice then you never made such a location notice, did you?

A. Didn't record it at any rate if it doesn't show; I don't remember whether it was recorded or not.

Q. That was prior to 1888, did you say?

A. Yes, sir. [831—681]

Q. Those are the only three, now— the only three location notices that you, yourself, ever posted up for yourself or that you were interested in?

A. I had some partners over here at Nevada Creek on Douglas Island.

Q. Douglas Island isn't in the Harris Mining District is it?

A. Yes, sir; the Harris Mining District goes to Steven's Pass.

Q. You contend that Douglas Island is in the Harris Mining District?

A. Yes, sir; the line goes up to Steven's Pass, up over Steven's pass to Auk Village.

Q. Commences at Auk Village, doesn't it?

A. Commences at Auk Village.

Q. Where is Steven's Island?

A. Between mainland and Admiralty Island, going south.

Q. You claim, then, that Douglas Island is in that

(Testimony of George Harkrader.)

amended description that the miners made in '81 or '2?

A. Yes, sir; it is in the Harris Mining District.

Q. What locations, then, taking for granted that Douglas Island is in this recording district, what locations did you make on Douglas Island?

A. Me and my partners took up a water right on Nevada Creek.

Q. Did you record that? A. Yes, sir.

Q. When was that?

A. I think it was '91 or '2, somewhere along there; I couldn't tell you the date.

Q. How was that notice signed?

A. I don't know as I could repeat the exact words; there were four of us signed it.

Q. Did you say that was in '81 or '82?

A. Somewhere along that time, I couldn't say exactly—'91 or '92.

The COURT.—I understood you to say '91 or '92?

A. '91 or '92. [832—682]

Q. I want to get the date.

A. I couldn't tell you exactly the year.

Q. How was that location notice signed—by whom?

A. I don't know that I could tell you; I suppose it was signed in accordance with this mining law, is all I could tell you.

Q. I want to know who signed it, Mr. Harkrader.

A. I signed it for one; Antone Marks signed it; Thompson signed it, and another man signed it, I cannot remember his name; he was an Austrian and

(Testimony of George Harkrader.)

had a peculiar name—I couldn't speak it.

Q. Did you have that notice recorded?

A. Yes, sir.

Q. What time did you have it recorded with reference to the time it was posted?

A. Well, within ten days after posting.

Q. Are you sure you did?

A. I am confident of it; yes, sir.

Q. Did you commence work on it right away?

A. We built a dam across the creek and turned the water out of the creek into a ditch.

Q. What did you do with it—do you own that water right now? A. No, sir.

Q. Sold it to some one?

A. Sold it to—it belongs to that company over there that has the ground now.

Q. Have you examined the records lately to see whether that notice is on record or not?

A. No, sir.

Q. You remember, though, of having had it recorded yourself? A. Yes, sir.

Q. With whom—United States Commissioner at Juneau? A. Yes, sir. [833—683]

Q. Did you ever make up an amended location notice of this water right, the last one that you speak of?

A. I couldn't say whether we did or not; I don't remember doing it.

Q. You don't remember that? A. No.

Q. Now, how many miners' meetings did you attend in Juneau, Mr. Harkrader?

(Testimony of George Harkrader.)

A. I don't think I attended one in Juneau.

Q. Did they have other places that they held meetings of this so-called organization?

A. No; we had other places that we held meetings to decide other troubles; suppose there was trouble on a mining claim, we held a meeting right on the claim.

Q. That would be pertaining to mining claims; that would grow out of disputes on mining claims?

A. Yes, sir.

Q. You didn't have any courts here in those days, did you? A. No, sir.

Q. Your difficulties over water rights and mining claims were submitted to the members of this organization to determine? A. Yes, sir.

Q. And while you didn't have courts, of course you would abide by the decision made by the miners?

A. Yes, sir.

Q. And after the courts came here, your lawsuits were all tried in the courts? A. Yes, sir.

Q. And the extending of the laws of the United States to some portions of the District of Alaska?

A. Yes, sir.

Q. And never had any other miners' meetings after that, did you?

A. Only this one, I believe, in the fall of '88.
[834—684]

Q. That is the one you told Mr. Hellenthal that you thought some action was taken about turning over the records to the United States Commissioner? A. Yes.

(Testimony of George Harkrader.)

Q. You were not at that meeting?

Q. I couldn't say that I was or wasn't.

Q. Now, you never attended any one of those meetings that were held up in the building where they all congregated to discuss business?

A. I don't think I was; I was always away somewhere.

Q. Did you ever examine the records, Mr. Harkrader, from 1880 up to 1888, to see what proportion of the water location notices were filed within ten days after posting? A. No, sir; I have not.

Q. Have you ever examined the records since 1888 down to the present time at Juneau, Alaska, to ascertain what proportion of the water locations made during that period of time were recorded within ten days? A. No, sir; I have not.

Q. Who else besides yourself, Mr. Harkrader, do you personally know of who undertook to or did comply with these miners' rules and regulations; I want you to limit the parties you mention to your own personal knowledge of what they did, and not what they told you?

A. Well, there was a general rumor that they all complied with it; I couldn't say that they did because not seeing their location notices I don't know.

Q. Are you sure that in this location notice you made you complied with the law in the recording of it, and in all other respects; are you sure of that?

A. Am positive of it; yes, sir.

Q. You are positive of it? [835—685]

A. I am pretty positive of it; I think I did.

(Testimony of George Harkrader.)

Q. Did you record your first location notice that was made on Nevada Creek at all?

A. Pretty sure we did record it.

Q. You are not positive of that, are you?

A. Quite positive of it.

Q. If the record doesn't disclose any such notice, then you didn't record it, did you? A. No.

Q. I will ask you if you ever looked at the record to see if there was any such location notice on file or not? A. I did not.

Q. Now, you don't know, of your own knowledge, any other person during these years that I have mentioned, who have complied with these so-called miners' rules and regulations pertaining to the acquisition of water?

A. I know quite a number that took up water, but I couldn't say that they complied with the rules; I suppose they did do so.

Q. You don't know of any resolution that this organization, in 1888, passed with reference to turning over the records of that organization to the United States Commissioner that came here?

A. No, sir; I don't; I know after that we had our recording done with the commissioner.

Q. Afterward you recorded with the commissioner? A. Yes, sir.

Q. Did the miners' organization pay that United States Commissioner any part of his salary?

A. Nothing more than paying for the recording that each one got done.

Q. Just the same as you would pay for the record-

(Testimony of George Harkrader.)

ing of a deed, mortgage or bill of sale?

A. Yes, sir. [836—686]

Q. You know that those fees were regulated by the United States law as to charges he made for recording those notices, or do you not know that?

A. That was my understanding, it was.

Q. There wasn't anything in your miners' rules and regulations under which this commissioner collected any fees, was there?

A. That I couldn't answer.

Q. Have you and Charley Wells talked over lately anything about the customs and rules that prevailed among the miners? A. Well, not to any extent.

Q. Have you and he examined the records to find out about some particular notices that were filed back in the '80's, since this suit was called?

A. In the Recorder's office?

Q. Yes. A. No, sir.

Q. But you have talked over with him about the miners' rules and regulations?

A. There has been some few words said, but nothing to speak of.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Harkrader, in posting notices locating water, you always attempted, as I understand, to comply with the rules?

(Question reframed because of objection.)

Q. In making water locations, and matters of that

(Testimony of George Harkrader.)

kind, would you, or would you not, be guided by the miners' rules?

(Not answered because of objection.)

Q. Did you comply with the law in making the locations you made?

A. We observed the rules laid down in this little pamphlet as being the law regarding the locating of water and mining claims in the Harris Mining District. [837—687]

Mr. HELLENTHAL.—That is all.

The COURT.—Now, Mr. Harkrader, I want to ask you a question. You have been testifying as to what the miners did up to 1888, have you not?

A. Yes, sir.

Q. Was there or was there not any miners' meeting ever held after 1888?

A. Not that I know of; not to my knowledge.

The COURT.—I mean a meeting of the miners of what has been called the Harris Mining District—was there any meeting of the miners after 1888, after the United States Commissioner came here?

A. Not to my knowledge there wasn't.

The COURT.—Now, I understand you to testify that ten articles in this little pamphlet that has been submitted to you, Plaintiff's Exhibit No. 33, were the rules that were generally observed by the miners in the Harris Mining District in relation to the location of water? A. Yes, sir; they are.

The COURT.—There is another rule that if he doesn't do that, he is held to have forfeited his claim. Now, did you ever know of any dispute between

(Testimony of George Harkrader.)

miners over water between 1880 and 1888 in the Harris Mining District?

A. Not over the right of location of water; they had disputes in regard to where several would be taking water out of the same creek, some man would take perhaps more than his share, more than he had recorded and they would have a dispute over that.

The COURT.—Did you ever hear of, or were you ever present at any meeting of miners in the Harris Mining District to settle the question as to whether a person had forfeited a water right by virtue of not complying with the rules?

A. No, sir; not that I know of. [838—688]

The COURT.—You never knew of any such question to arise? A. No, sir.

The COURT.—You don't know of any such question having arisen?

A. Don't know of any such question arising.

The COURT.—Do you recall any question having arisen at any time and passed on by the miners which involved the question as to whether a man had forfeited his water right because he violated any of these rules?

A. I never knew of anything of that kind coming up.

The COURT.—That is all.

(Questions by Mr. HELLENTHAL.)

Mr. Harkrader, do you know what, under the rules of the miners as they were understood and observed by the miners of the Harris Mining District, would

(Testimony of George Harkrader.)

be the result if a water location was not recorded within ten days?

(Not answered because of objection.)

Q. Now, what was the effect—what would be the effect upon the water, under the rules and laws of the miners as they were understood and observed by the miners generally in the Harris Mining District, if the notice of location was not recorded within ten days, the time prescribed by the rules?

The COURT.—He may answer that question—whether he knows or not.

Q. Do you know? A. I do.

Q. What would be the effect of a failure to record a water notice within ten days as provided by the rules?

A. Why, if anybody had located the water in the meantime, he would lose his water right.

Q. If anyone had stepped in in the meantime he would lose his water location?

A. And located the same water, he would lose his.

Q. That was the rule as observed by the miners from the earliest [839—689] time—that is, 1881 to the present time?

A. That was the rule laid down in our little pamphlet containing our mining laws.

Q. That is the rule up to the present time?

A. As far as I know, it is.

(Questions by Judge WINN.)

Q. That is your opinion as to what the rules were? You have given Mr. Hellenthal your opinion as to what the rules were? A. Not exactly my opinion.

(Testimony of George Harkrader.)

Q. Didn't you testify to the Court a while ago that you never knew of such a controversy as this to arise?

A. It was generally—

Q. That is true, isn't it; you never knew of such a controversy to arise?

A. Anything that was in the law you have to go by it; if you don't go by it you certainly know the results.

Q. Did you ever know of miners to settle any such question as you have just presented in your answer to Mr. Hellenthal's question?

A. I never knew that they did.

Q. Then, you are putting your own construction upon the rules.

A. The pamphlet tells you what the law is; if you don't observe it, you know what the penalty is.

Q. That is the reason you answered the question the way you did? A. Yes, sir.

Q. Because you saw the rules there, and the rules provide for just what you have stated and that is the reason that you gave the opinion you did give?

A. That is what I base my opinion on; yes, sir.

Q. And nothing else?

A. And common sense along with it.

Q. Common sense and the rule?

A. Yes, sir. [840—690]

Q. And that is all? A. Yes, sir.

Judge WINN.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. Mr. Harkrader, during your experience in the Harris Mining District, have you ever known of any-

(Testimony of George Harkrader.)

one in the court or a miners' meeting, or elsewhere, to claim a water right under a water location notice that was not recorded within ten days?

(Not answered because of objection.)

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [841—691]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal WILLIAM STEWART, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of William Stewart, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name, Mr. Stewart?

A. William Stewart.

Q. You are the same Stewart after whom the Stewart River was named?

A. That is what they say.

Q. When did you first come to Alaska?

A. I come in 1872 to Wrangell.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. Did you ever live in the Harris Mining District? A. Yes, sir.

Q. When did you first come to the Harris Mining District, Mr. Stewart? A. I come in 1880.

Q. Do you remember when the Harris Mining District was organized? A. Yes, sir.

(Testimony of William Stewart.)

Q. You remember the occasion of its organization, do you? A. I think I remember most of it.

Q. You remember that it was organized and when it was organized? A. Yes, sir.

Q. Do you remember the territory it embraced?

A. It embraced from the Auk Village to Taku.

Q. The territory lying from the Auk Village to the Taku River? A. Yes, sir.

Q. Did it include within its boundary, Mr. Stewart, the territory known as the Silver Bow Basin, the neighborhood in which the [842—692] Ebner and the Alaska-Juneau mines are in Gold Creek Canyon?

A. Yes, sir.

Q. They are all in the Harris Mining District?

A. Yes, sir.

Q. Do you recall that the miners of the Harris Mining District adopted rules governing the appropriation of water and the acquisition of water rights subsequent to the time the District was organized—shortly thereafter? A. Yes, they did.

Q. When was it they adopted these rules—about what year? A. In '81.

Q. You have heard read here to Mr. Wells, have you, when he was on the witness-stand—heard read into the record the rules upon that subect as they appear in the minutes of the Harris Mining District?

A. Yes, sir.

Q. What do you say as to those rules as they were read, as to how they compare with the rules as they were adopted by the miners at that time and observed

(Testimony of William Stewart.)

by them—as to whether they are the rules or not?

(Question reframed because of objection.)

Q. How do those rules as they were read into the record from the minutes of the Harris Mining District, compare with the rules that were adopted by the miners at that time—as to whether they were the rules adopted or not?

(Question reframed because of objection.)

Q. Mr. Stewart, the rules that were read into the record this morning from the minute-book of the Harris Mining District, how do they compare with the rules that were in force in the district in '81 and '82—whether they were the rules or not?

(Question reframed because of objection.)

Q. Now, Mr. Stewart, do you know what rules were in force in the Harris Mining District governing the appropriation of water [843—693] and the acquisition of water rights in the years of 1881 and '82? A. Yes, I think I do.

Q. How do these rules that were read into the record in your hearing from the minute-book of the Harris Mining District compare with the rules as they were in force—whether they are the same or not?

A. I think they were, to the best of my knowledge.

Q. How long did you remain in the Harris Mining District, Mr. Stewart, at that time?

A. I left here—I quit mining in the Basin in '85.

Q. You left the District when?

A. I quit mining and I didn't leave until '86, but I quit mining, in '85.

(Testimony of William Stewart.)

Q. Up to the time that you left do you know whether the rules that were in force, that you have already testified to as being in force, were generally observed by the miners of the Harris Mining District? A. I think they were.

Q. The first question is, Mr. Stewart, whether you know, have any knowledge about it, whether they generally observed those rules?

A. I don't know whether—

Q. The question is whether you know whether the miners, while you were here, generally observed those rules? A. They did as far as I know.

Q. As far as you know? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. You came here, Mr. Stewart, to Juneau, you say, in 1880 or '81? [**844—694**]

A. I came here in the fall of '80.

Q. And remained here until the fall of '85?

A. Yes, sir.

Q. Did you attend any miners' meetings that were held here during that time?

A. I don't know; didn't attend many of them, but I attended this one.

Q. You attended one meeting during that time?

A. Yes, sir.

Q. When was it that you attended that meeting, as well as you can recall?

A. I couldn't give the dates to-day.

Q. It was before you left, was it? A. Yes, sir.

(Testimony of William Stewart.)

Q. Where did they hold that meeting, if you remember, Mr. Stewart?

A. It was held in William Newcomer's house.

Q. Was that in Juneau? A. Yes, sir.

Q. What was transacted at that meeting, do you remember?

A. Well, I couldn't say exactly what it was.

Q. You don't remember anything that took place at that meeting that you attended? A. No.

Q. How many water location notices did you make yourself while you were here from 1880 to 1885, Mr. Stewart? A. Never made any.

Q. And you don't know what took place at the miners' meeting that was held that you attended—the only one—you don't know what took place there?

A. It is so long ago that I cannot recollect exactly what did take place.

Q. During that period that you were here, did you attend any trials of any matters growing out of these miners' rules, before [845—695] a miners' meeting? A. I did.

Q. What did they try?

A. They were trying a dispute about a claim in the Basin.

Q. Mining claim? A. Yes.

Q. In those days the only court they had to administer the law was the miners' organization, wasn't it?

A. Yes.

Q. There was no court in Alaska? A. No.

Q. And that is the only dispute that you ever knew

(Testimony of William Stewart.)

of that came up before this organization for settlement? A. Yes.

Q. There was no other question, that you recollect?

A. Not that I had anything to do with.

Q. You had something to do with this particular disputed mining claim? A. Yes.

Q. Did you ever attend any other miners' meeting where any other dispute was being tried out before them? A. No, sir.

Q. I mean during the time that you were here in 1881 to '85; you never attended a trial of any question that was up before this organization except the one that you have stated?

A. Not on a trial that was settled by arbitration.

Q. Did you attend any other thing that came up before the miners for settlement? A. No.

Q. Nothing else? A. No.

Q. Have you ever attended any such meeting since then? A. No, sir. [846—696]

Q. You went away in '85, and when did you come back to Juneau?

A. I quit mining in '85, but I was still here through the spring of '86, and I went in on the Yukon in the spring of '86 and come back; I was here the winter of '86.

Q. Had you ever read over the miners' rules and regulations pertaining to water rights before you left here in '85? A. No, sir.

Q. You had never seen any book they were printed in, had you? A. No, sir.

Q. You never have seen any of those printed books

(Testimony of William Stewart.)

since that time, have you? A. No, sir.

Q. And you quit mining in '85?

A. I did—that is, in Juneau.

Q. Where have you been mining since then?

A. In the Yukon Territory.

Q. In Canada?

A. In the United States and in Canada both; they are close together.

Q. You know that isn't in the Harris Mining District, don't you? A. No.

Q. It isn't in in the Harris Mining District?

A. No.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [847—697]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal BEN BULLARD, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Ben Bullard, for Plaintiff (in Rebuttal.)

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Ben Bullard? A. Yes, sir.

Q. You live in Juneau? A. I do.

Q. Do you know where the Harris Mining District is? A. I do.

Q. What business or occupation have you followed—do you follow, Mr. Bullard? A. Mining.

Q. How long have you followed that occupation?

(Testimony of Ben Bullard.)

A. Well, ever since I have been in Alaska, and I think 30 or 40 years before—20 years before.

Q. So you have followed it for many years?

A. Followed it for a great many years.

Q. When did you come to the Harris Mining District? A. About 1899.

Q. Did you have occasion to learn what the rules in force were in the Harris Mining District regulating and governing the appropriation of water and the acquisition of water rights? A. I did.

Q. When did you come here, did you say?

A. I came here in 1899.

Q. Did you have occasion in that year to inquire and find out what the rules were?

A. Not that year, no; that is when I came to Juneau; I began [848—698] this investigation of water rights and water laws in the Harris Mining District about 1902.

Q. Did you, in the year 1902, then find out what the local laws were that were in force in the Harris Mining District relating to the appropriation of water and the acquisition of water rights?

A. I did.

Q. Do you know what the laws were that were at that time in force in that District? A. I do.

Q. You have heard read into the records from the minutes of the Harris Mining District certain laws governing the appropriation of water,—read in this morning? A. I have.

Q. How did the laws as you found them in force in the year 1902 compare with those laws that were

(Testimony of Ben Bullard.)

read into the record?

A. They compare exactly—that is, those were the rules I found to be in force.

Q. Those were the rules you found to be in force at that time? A. Yes, sir.

Q. Do you know whether those rules were at that time, and since that time up to the present time have been, generally followed by the miners in the Harris Mining District in the appropriation of water and the acquisition of water rights?

A. I do; that has been the purpose—

Q. I will now ask you if those rules as read into the record from the minutes of the Harris Mining District relating to the appropriation and acquisition of water rights, have been generally followed and observed by the miners of the Harris Mining District between the year 1902 and the present time?

A. So far as I know I think they have, yes.

Q. Do you know the effect of a failure to comply with the rules, under the rules in force during those years,—Do you know [849—699] what the effect would be of a failure to comply with the rules in an attempt to acquire a water right under the rules as you found them in force and as they have been in force during the time you have testified to, from 1902 to the present time. A. I do.

Q. What would the effect be?

A. It would result in a forfeiture of whatever rights might be acquired and a termination of them.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of Ben Bullard.)

Cross-examination.

(By Judge WINN.)

Q. How many water locations have you ever made, Mr. Bullard, since you have been here?

A. I have made two.

Q. Where were they?

A. One on McGinnis Creek and the other on what is known as Nugget Creek.

Q. Ever make one on Lemon Creek?

A. I did not.

Q. You made one on Nugget Creek, and one where else? A. On McGinnis Creek.

Q. Where is McGinnis Creek?

A. It is a tributary of Montana Creek; it is north of Mendenhall Glacier; it flows into the Mendenhall River.

Q. When did you make that last location?

A. That was the first one I made; I made that in 1903.

Q. Did you draw your own notice?

A. I didn't make that location for myself; I made that for and in behalf of the Mansfield Mining Company; they employed my services to go out there and locate a water right for them on McGinnis Creek and to construct a ditch, flume and pipe-line, [850—700] and so forth, down to their works.

Q. Did you ever make one on Steep Creek, between Mendenhall Glacier and Lemon Creek? A. I did.

Q. That is the third one?

A. That is the third one, yes; I had forgotten about that.

(Testimony of Ben Bullard.)

Q. When did you make that?

A. That was made in about 1907, thereabouts; that was made subsequent to the one I made on Nugget Creek; that was made in 1905.

Q. In this one that you say you had forgotten about, did you follow the miners' rules and regulations in posting and recording within ten days?

A. I did.

Q. You are sure of that? A. I am sure.

Q. The other two, did you also post and record within ten days? A. What?

Q. The other two locations that you made, did you post and record within ten days?

A. The McGinnis Creek notice I didn't record; the officers of the company recorded that.

Q. You made it and turned it over to them, did you?

A. Oh, no; I was there in their behalf; I located a favorable place to divert the water, and made the surveys for ditches, and so forth; and when the location of the water right was made I dictated the form of notice—those people were not acquainted with the subject matter, and I acted as an agent for them; they were present, but I don't think I wrote that notice; I think I dictated it to them or told them how to write it, and am certain they recorded it; I cannot say, but I am quite sure now that I did record the Steep Creek notice within ten days, and I think that I recorded the Nugget Creek notice within ten days; I think I did—I am pretty sure I did. [851—701]

Q. Are you positive of it?

(Testimony of Ben Bullard.)

A. Yes, I am sure I recorded the Nugget Creek notice within ten days, but now it may have been possible I missed a day or so on the Steep Creek notice, I don't think I did, though; I intended to comply with the rules.

Q. But if you didn't record it within the ten days you didn't comply with the rules, did you?

A. I did not.

Q. Where is the other one you made—McGinnis Creek, Nugget Creek and Steep Creek?

A. That is all.

Q. The other two besides the one I was just questioning you about, did you post and record within the ten days?

A. You are questioning me now about the Steep Creek notice?

Q. I just got off the Steep Creek notice and was talking about the other two—did you post those and record them within the ten days?

A. I told you I recorded the Nugget Creek notice within ten days, but the McGinnis Creek notice was not for myself, it was for the company and I acted as agent for the Mansfield Company; whether they recorded the notice within ten days or not I couldn't say; it wasn't my duty to record the notice—they had officers there for that.

Q. Have you gone through the records at Juneau to ascertain the fact as to whether or not these rules of posting and recording as laid down in the Miners' rules were universally followed? A. Why, no.

Q. Did you go through them to find out if it was

(Testimony of Ben Bullard.)

generally followed or not,—did you go through the records to find out whether or not the miners' rules and regulations with respect to posting and recording has been generally followed?

A. I never made any such investigation.

Q. How many water notices, Mr. Bullard, besides these two, during [852—702] this entire time you have been in this recording district, do you have personal knowledge of as having been posted and recorded within the time and under the terms and conditions of the miners' rules?

A. I haven't any other knowledge, I don't think, on that subject.

Q. Now, this Harris Mining District, what do you understand to be the boundaries of it?

A. Well, at that time I knew the boundaries because I saw the records of the boundaries; that has somewhat passed out of my memory, but I think it went down to Taku River and over to Steven's Channel and off to Sitka I don't know how far; I couldn't define the boundaries of the Harris District; I know that it contained the territory in which I posted the notice, because I investigated the subject at that time.

Q. About how many miles does it cover—do you remember from the description given in the miners' rules if it covers a rectangular scope of country?

A. I don't; no, sir.

Q. Do you know how many miles wide or long it is?

A. I don't; no, sir.

Q. It includes all of Sheep Creek, doesn't it, near Juneau?

A. I am quite sure it does.

(Testimony of Ben Bullard.)

Q. All of Silver Bow Basin? A. Yes, sir.

Q. Mendenhall? A. Yes, sir.

Q. Salmon Creek? A. Yes.

Q. Nugget Creek? A. Yes.

Q. Lemon Creek? A. Yes.

Q. It includes the principal part of the mining country in [853—703] Southeastern Alaska, does it not?

A. Yes; it includes this area in which the greatest portion of the mines are located.

Q. Now, at any time during this period that you have been here, have there been any trials of disputed matters settled by any miner's organization that you know of? A. None that I know of.

Q. You don't know of the miners ever taking up any question of forfeiture under those rules and trying it out, do you? A. I do not.

Q. You know there hasn't been any meeting of any such organization since you have been here?

A. I think there has been none; I never heard of it.

Q. These notices you made, you recorded them with the United States Commissioner, ex-officio recorder? A. Yes, sir.

Q. And those in the Harris Mining District are all recorded in Juneau, were they? A. Yes, sir.

Q. You recorded them just the same as you did any other instrument, didn't you? A. Yes, sir.

Q. All disputes over mining rights and mining claims and water rights since you have been here have been determined and tried in the courts under the laws of Alaska, haven't they?

(Testimony of Ben Bullard.)

A. I think they have.

Q. The courts and these recording offices were all established when you came here, were they not, Mr. Bullard; that is, you had the Commissioner's court, Probate court and Recorder's office, and United States District courts—they were all established when you came here? A. Yes, sir.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [854—704]

The plaintiff, further to maintain the issues on its part, introduced as a witness in rebuttal PERRY WILEY, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Testimony of Perry Wiley, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Perry Wiley? A. Yes, sir.

Q. You live in Juneau at present? A. Yes, sir.

Q. When did you first come to Juneau?

A. Latter part of 1896.

Q. Did you ever have occasion to inquire into the question as to what were the rules governing the appropriation of water, and other rules of like character, in the Harris Mining District—if so, at what time? A. Shortly after 1898?

Q. At that time did you ascertain what the rules and regulations governing that subject were in the Harris Mining District which were in force at that

(Testimony of Perry Wiley.)

time in the Harris Mining District?

A. I had copies of the Harris Mining District rules which Judge Delaney gave me.

Q. I hand you here a little pamphlet, marked Plaintiff's Exhibit No. 33, and ask you to look at it and state how that compares—the rules therein stated, compare with the laws as you found them to be in force at the time you have mentioned, 1898?

A. Well, the pamphlet is the same, I guess; it is one got out by Delaney and Gamel.

Q. The pamphlet that you have was identical with that one? A. Yes.

Q. You have been around here more or less since that time, haven't you, Mr. Wiley? [855—705]

A. Yes, sir.

Q. Do you know, in a general way, whether the rules have been observed since that time by the miners of the District?

A. I have always heard it referred to that way.

(Answer stricken.)

Q. In a general way, Mr. Wiley, were those rules observed generally by the miners since the time that you have mentioned to the present date?

A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Now, Mr. Wiley, whatever notices you have ever made were up in the Porcupine Mining District, weren't they?

(Testimony of Perry Wiley.)

A. A few in Harris Mining District in recent years.

Q. How many have you made, do you know?

A. I think there were two made.

Q. Where? A. Auk Bay.

Q. When did you make those?

A. I think it was 1911 or '12.

Q. Both of them?

A. Yes; I didn't make them myself; my partners made them.

Q. Who did the posting of them? A. Partners.

Q. Who was your partner, Mr. Wiley?

A. E. C. Spaulding and Butterball.

Q. Did you ever have anything to do with the recording of them?

A. No; they were recorded, though; I saw the certificate after they were recorded, the stamp.

Q. Were they recorded within ten days after they were posted—do you know that without looking at the record? [856—706]

A. I won't be sure that they were, but I think they were, right away, immediately.

Q. You are not positive of that?

A. Not positive.

Q. Those are the only two that you have ever made or been interested in?

A. Inside the Harris Mining District.

Q. Now, the Harris Mining District extends over a large scope of the mining country in Southeastern Alaska, doesn't it, Mr. Wiley?

A. Why, yes; a good portion of it.

(Testimony of Perry Wiley.)

Q. You have never gone through the records to ascertain what general rule has been followed up with reference to the posting and filing of notices, have you?

A. No, nothing more than from those pamphlets that were issued.

Q. Now, what makes you say in a general way they were followed?

A. They used those as a general guide to go by.

Q. Who did you ever see have those besides yourself?

A. Most all of the prospectors have them.

Q. Can you name one?

A. Burbridge had one.

Q. Who else do you remember had one?

A. James Mitchell.

Q. Who was he?

A. A prospector on the Island.

Q. Who else?

A. I don't know that I can name any in particular.

Q. Jim Burbridge is dead, isn't he?

A. Yes, sir.

Q. Do you know where Mitchell is?

A. I guess he is up at Eagle River now; he lives on the Island.

Q. I would like to have you state how those two water locations that you made were signed—just give the names of the parties who signed them? [857—707]

A. I think they were signed by E. C. Spaulding

(Testimony of Perry Wiley.)

and Alex Butterball and myself; I wouldn't be quite certain about it, without looking at my notes.

Q. And in 1911?

A. I thing it was '11 or '12.

Q. That is as near as you can give the date?

A. Yes, sir.

Q. Have you got any one of those in your possession yet? A. I think so.

Q. If it isn't too much trouble I wish you would look them up, Mr. Wiley.

A. Some of us have got them.

Q. If you can find them I wish you would look them up, and if you are going to be around here in the next few days I would like to see them. You don't know what rule Thane's people, who are the head of the Alaska-Gastineau Company used in posting filing and recording notices, do you?

A. I do not.

Q. You don't know what rule the Treadwell Company followed, do you? A. I do not.

Q. You don't know what the Alaska-Juneau Company—what rules it followed, do you?

A. I do not.

Q. You don't know what rules the Ebner Gold Mining Company followed, do you? A. I do not.

Q. Those are the largest mining companies in Southeastern Alaska, are they not?

A. Yes, sir.

Q. You have never known of any disputes that were tried out under the miners' rules and regulations since you came here?

(Testimony of Perry Wiley.)

A. That was all done away with before I came here.
[858—708]

Q. Notices are recorded with the United States Commissioner here at Juneau? A. Yes, sir.

Q. And all disputes are settled in the courts over mining locations? A. Yes, sir.

Q. Those suits you haven't kept up with?

A. No.

Q. You don't know of any suits that have ever been tried in court where the question of the forfeiture of a mining location was particularly in dispute, have you? A. No.

Q. Of your own personal knowledge, I mean?

A. No.

Q. You have never had any such suit yourself?

A. No.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. You said the matter of settling—what you meant to say—I don't know whether your answer to Judge Winn's question is clear—you meant to say that the matter of settling disputes before miners' meetings had been done away with before you came here? A. That is what I mean to say.

Q. You didn't mean to say that the rules had been done away with, but the enforcing of them before the miners' meetings? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

The COURT.—I regard this as quite an important

(Testimony of Perry Wiley.)

point, and I want to ask—I understood you to say, Mr. Wiley, that the little pamphlet which is marked Plaintiff's Exhibit No. 33, [859—709] which bears on the title page the statement that it was prepared by Delaney & Gamel, Attorneys at Law, contains the rules and regulations that you found to be in force among the miners when you came here in 1899?

A. Yes, sir; in conversation with the Judge, he gave me two or three of those pamphlets and told me that he kept them for reference when he was on the bench and that they were the rules in force.

The COURT.—Now, among those rules that you say were in force in this: “Article 6. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein; First—the extent required, measured under a four-inch pressure. Second—The purpose for which he claims it, and the place of intended use”—that rule was in force at the time, was it? A. Supposed to be.

The COURT.—How did you learn that that rule was in force at the time?

A. Well, just as I say; just as the rules give it and the Judge told me the rules were in force here.

The COURT.—Did you ever hear any miners say that that rule was in force?

A. Not particularly in this District here; we were organizing at that time a miners' organization in the Porcupine District.

The COURT.—Did you ever hear any miners in the Harris Mining District say that that rule which

(Testimony of Perry Wiley.)

I have just read to you—say that that rule was in force in the Harris Mining District in 1899?

A. Well, I don't know that I ever did hear them say it was in force.

The COURT.—Did you see any location notices of water in which those things were all set forth?

A. I have saw location notices of water where they were staked [860—710] up, but whether they were recorded—

The COURT.—I am not talking about the recording now. Did you ever see any location notices of water in the Harris Mining District in which there was set forth the number of inches desired, and the purpose for which it was claimed, and the intended use, in 1899, when you came here?

A. No, I don't know that I ever did.

The COURT.—You never saw any; and did any miner ever tell you that there was such a rule in force?

A. Not that I can recall from my memory now.

The COURT.—I don't mean to confine you to the name of the miner, but do you remember that any miner ever did tell you that that was the rule in the Harris Mining District?

A. No, I don't believe so.

The COURT.—Another rule is that “A copy of the notice must within ten days after it is posted be recorded in the books kept by the recorder of the district.” Did any miner ever tell you that that was the rule of the Harris Mining District—that it

(Testimony of Perry Wiley.)

must be recorded within 10 days after a location notice of water was posted?

A. Yes, that was always understood that you should do it.

The COURT.—Now, how did you understand it?

A. I must have got it from miners around here at various times.

The COURT.—Do you remember of any miner that ever told you there was such a rule?

A. I couldn't refer back to any particular occasion when I was discussing the proposition.

The COURT.—But you do remember distinctly that some miner told you that that was the rule in the Harris Mining District in 1899?

A. I remember that that was the custom, yes; general custom as I learned it here.

The COURT.—Now, Article 7 of those rules reads that “Within twenty days during the working season, after the notice is [861—711] posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion. unless temporarily interrupted by rain or snow.” Now, did any miner ever tell you that that was a rule in force—custom or rule in force in the Harris Mining District in 1899?

A. No, I don't know that they ever told me; I don't remember of them telling me.

The COURT.—Do you know that that rule was in force in the Harris Mining District in 1899?

(Testimony of Perry Wiley.)

A. No, I don't know that it was from my personal observation.

The COURT.—You were here at that time, weren't you?

A. No, not in the Harris Mining District; I was in and out of here, but I wasn't operating here.

The COURT.—“Article 8. By ‘completion’ it is meant conducting the waters to the place of intended use.” Did you know, in 1899, that that was what the miners of the Harris Mining District meant by the use of the word completion in what had gone before? A. Just read that again, please.

The COURT.—“Within twenty days, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow. By completion it is meant conducting the waters of the place of intended use.”

A. Yes; I always understood that you had to commence work and work continually on the job until it was completed.

The COURT.—Until the job was completed.

A. Yes; you couldn't work a little off and on.

The COURT.—Did you understand that that was what the miners of this District understood by the word “completion”? [862—712]

A. In general, yes.

The COURT.—“Article 9. By a compliance with the above rules, the claimant's right to the use of

(Testimony of Perry Wiley.)

the water relates back to the time the notice was posted.” In 1899, did any miner of the Harris Mining District tell you that if you located a claim in the Harris Mining District and did these things that have been mentioned,—posted your notice, and so forth, and recorded it,—that your claim would relate back to the time of posting?

A. I don’t know that I ever discussed it with anybody.

The COURT.—You don’t know whether anybody ever told you that or not?

A. Don’t remember ever discussing it with anybody.

The COURT.—Do you know whether or not that was a rule at that time?

A. Nothing more than the rules which I had read in the Harris Mining District.

The COURT.—Nothing more than appeared in the pamphlet which Judge Delaney gave you?

A. Yes; the rules of the Harris Mining District.

The COURT.—What did you understand when Judge Delaney handed you a pamphlet like this—did you understand that those were the rules that they had adopted a long time ago, or did you understand that those were the rules that were in force at the time, 1899?

A. I understood it was the rules that were in force at that time; he told me that; he told me he always kept them for reference while he was on the bench, and we were organizing up at Porcupine and he gave me them for reference also.

(Testimony of Perry Wiley.)

The COURT.—Now, it also says “Article 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies [863—713] therewith.” Did anybody tell you that was the rule?

A. No, nobody told me that was the rule.

The COURT.—Did anybody ever tell you that under such and such a clause a man’s water right had been declared forfeited because he didn’t comply with the rules? A. I don’t know personally.

Q. But did anybody ever tell you that anybody’s water right had been forfeited because he didn’t comply with the rules?

A. Not that I can recall now.

Q. Did Judge Delaney tell you that?

A. No, not that particular clause.

Q. Did you ever know of the question arising anywhere—did you ever know what the miners did in such a case as that?

A. In the Harris Mining District?

The COURT.—Yes.

A. No, I never knew of such a case that come up before my observation.

The COURT.—Never heard of anything of that kind? A. No, sir.

The COURT.—Never heard of anybody trying to forfeit another’s rights on account of failure to comply with these rules? A. No, sir.

The COURT.—That is all.

(Questions by Judge WINN.)

Q. The fact is you went from Juneau to Porcupine

(Testimony of Perry Wiley.)

to mine when you first came here, didn't you, Mr. Wiley? A. No, I went to Cook's Inlet.

Q. How long did you stay there?

A. A year, and then I came back here.

Q. And then you went to Porcupine?

A. Yes, sir.

Q. And you stayed up there and mined how long?

[864—714] A. Oh, five or six years.

Q. Up to what year?

Q. Up to the spring of 1904.

Q. And over that period of time you didn't have any experience in locating water rights, mining claims or anything else in the Harris Mining District? A. No, not in the Harris Mining District.

Q. And you got a pamphlet that Judge Delaney gave you, with the intention of organizing a mining district up in the Porcupine Mining country, didn't you? A. He gave it to me as a reference.

Q. As a reference, and to follow? A. Yes, sir.

Q. And you know that the pamphlet also had rules and regulations about taking up mining claims?

A. Yes, sr.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Judge Delaney was the leading mining lawyer of this country in the year of 1899, was he not?

A. I suppose he was; considered at that time one of the best lawyers here.

Q. You considered him one of the best lawyers here? A. Yes.

(Testimony of Perry Wiley.)

Q. And he told you that all the rules that were contained in that pamphlet were in force at that time; not any single one, but all of them?

(Not answered because of objection.)

Q. Now, Mr. Wiley, did you ever hear any miners in the District tell you that all these rules in this little pamphlet were the rules in force in the District? The question I am asking, Mr. Wiley,—the Court or counsel asked you whether any [865—715] particular miner had ever told you that any particular clause mentioned, or rule, was in force, and you have replied that you didn't recall any telling you that any particular rule was—

A. Yes, sir.

Q. Did you ever have any conversation, or do you recall any conversation with miners in the District in which you were told that all of the rules contained in this pamphlet were the rules in force in the District?

(Form of question changed because of objection.)

Q. What, if any, conversation have you had—

A. I can't recall any particular conversation with any particular miners, but, of course, it was the general impression that the pamphlet as a whole—as I said, it was the local laws of the Harris Mining District.

Q. It is generally understood among miners that all the rules in this little pamphlet were in force by the miners generally.

(Not answered because of objection.)

Mr. HELLENTHAL.—That is all.

(Testimony of Perry Wiley.)

Recross-examination.

(By Judge WINN.)

Q. Mr. Wiley, with whom did you ever talk to get this general impression?

A. As I say, I couldn't give you any particular conversation at any particular time, but some of them—

Q. You never talked with any of these people, did you? A. No, sir.

Q. Of the Ebner Gold Mining Company?

A. Not that I know of.

Q. I want you to single out some particular person you had this conversation with.

A. Why, as I say, it was generally understood that those were the local rules of the Harris Mining District—any particular [866—716] time or any particular conversation I had I couldn't give.

Q. You got your general understanding by reason of having that pamphlet, didn't you, Mr. Wiley?

A. Yes.

Q. You didn't stay in and about Juneau here and take up any mining claims when you first came here?

A. No, sir.

Q. So you got the impression from the conversation you had with Judge Delaney and from the rules and regulations, didn't you, Mr. Wiley?

A. Yes; he gave them to me.

Judge WINN.—That is all.

(Testimony of Perry Wiley.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Did you ever talk with Cordwell Jim about that, Mr. Wiley?

(Objection.)

Q. Who was Cordwell Jim? A. Mr. Burbridge.

Q. What was Mr. Burbridge's occupation?

A. Prospector.

Q. Mining and prospecting?

A. Mining and prospecting.

Q. Did you ever talk with him about it?

A. I have; I don't know that I could recall any particular time.

Q. You have mentioned Mitchell, also; I think he had a copy of this book; did you ever talk with him about it?

A. Yes; I talked with him about it, we discussed these things; I don't know any particular cause there that was brought out and discussed, you understand.

Q. Mitchell was a miner, wasn't he?

A. Yes, he is here yet.

Q. Do you recall having a conversation with others of like [867—717] character when the rules were particularly discussed—a conversation of the character you have testified to having had with Mitchell and Burbridge? A. I don't know that I did.

Q. Don't recall it? A. No.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(Witness excused.) [868—718]

(Testimony of Perry Wiley.)

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal C. A. FOX, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions, as follows:

Testimony of C. A. Fox, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What are your initials? A. C. A.

Q. Where do you live? A. I live in Juneau.

Q. Do you know where the Harris Mining District is?

A. I know where the Harris Mining District is, yes.

Q. How long have you lived in the Harris Mining District? A. Off and on for 32 years.

Q. What year did you first come here? A. 1881.

Q. Do you remember the time the district was organized?

A. The district was organized before I got here, called the Harris Mining District at the time.

Q. Do you know the boundaries of the district?

A. The boundaries, as I understood it at that time, were from Auk Inlet to the Canadian boundary to the Taku up the other side of Douglas Island and to the Auk Inlet again.

Q. Would take in the Gold Creek Basin, the Silver Bow Basin and all that country? A. Yes, sir.

Q. Had the miners adopted the rules relating to the appropriation and acquisition of water rights when you came here?

(Testimony of C. A. Fox.)

A. I couldn't say because I went into the interior; I wasn't here [869—719] when those laws were made; I went with Slim Jim and others into the Yukon.

Q. When did you return from the Yukon?

A. In the fall of '81, and then the fall of '82 and the fall of '83.

Q. Did the miners of the Harris Mining District have laws at that time upon the subject of appropriating waters?

(Not answered because of objection.)

Q. Did the miners of the Harris Mining District observe laws and rules relating to the appropriation of water and the acquisition of water rights at that time—do you know whether they observed rules at that time? A. Yes, I know they had laws.

Q. How did the laws that they observed at that time, '81 and '82, compare with the rules that have been read into the record from the minutes of the Harris Mining District—you heard those read, didn't you, Mr. Fox? A. Yes.

Q. How do they compare?

A. As I understood them at the time, they are just the same.

Q. Just the same?

A. As I understood them at the time.

Q. How long have you been here off and on, Mr. Fox?

A. I left in '84, and didn't come back until '98.

Q. And since then have you been here all of the time?

(Testimony of C. A. Fox.)

A. I was here five or six years and then I went below again, and came back about two years ago, and then went again last fall, and then came back again.

Q. Do you know what laws have been observed by the miners of the Harris Mining District during the various times you were here, commencing with the time in '81 up to the present time—say yes or no, whether you know? [870—720]

A. Yes.

Q. How do the laws that have been observed by the miners of the Harris Mining District in relation to the appropriation of water and the acquisition of water rights during the years you have been here, from 1881 to the present time, compare with the rules you heard read into the record from the minutes of the Harris Mining District as to whether they were the same or not?

A. As I understand them, yes.

Q. And they were the same?

A. As I understand them.

Q. These rules were generally observed by the miners of the Harris Mining District during that time, and are still being so observed?

A. Yes, as far as I know.

Q. Mr. Fox, have you been mining in this district?

A. Yes, and located claims in the district.

Q. And you are a miner by occupation?

A. I have followed it all my life.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of C. A. Fox.)

Cross-examination.

(By Judge WINN.)

Q. What mining have you done in the Harris Mining District, Mr. Fox?

A. I have four claims over on Douglas Island, and I think there was probably three or four hundred feet of tunnel—

Q. Ever locate any water? A. Never did.

Q. Now, when you answered the question about what law there was in force and effect at the various times that Mr. Hellenthal questioned you about, what did you mean, Mr. Fox? [871—721]

A. I mean the general understanding between miners of the law in the district, the rule understood by the miners in the district of the laws that were in effect.

Q. What law?

A. The general laws made by the miners?

Q. Pertaining to mining claims?

A. And everything else pertaining to the workings of mines in the district, as I understand it.

Q. What did you understand to be the rules governing the acquisition of water? Just state, please.

A. I understood from general conversation amongst the miners—we always talked together about these matters,—that if you located a water claim you had ten days to put up a notice on it, and after that 10 days was passed you had 20 days to do some work or something to designate what you were going to do with this water, put it to some use; that was my understanding.

(Testimony of C. A. Fox.)

Q. What else?

A. If you failed to do that you lost your water right.

Q. Anything else?

A. That is all I know of in that line.

Q. Did you know that you had to contain in your water location notice that you took up a certain number of miner's inches of water? A. Yes, sir.

Q. Did you ever see a water location of that kind that had all the requirements in it?

A. I never did.

Q. Did you ever see any water location by anybody posted anywhere?

A. Yes, I saw a location notice up on Nevada Creek where they took the water out.

Q. Have you ever seen any water location notice posted, in which it stated that you have to take so many miner's inches of water? [872—722]

A. Yes.

Q. Where? A. In California.

Q. I mean in the Harris Mining District?

A. I seen notices on the claims; haven't examined them.

Q. What particular miners did you have conversations with about these location notices?

A. That is a hard one.

Q. I want you to tell me what particular miner you ever discussed these matters with, and when you discussed it with them?

A. I have discussed it with numerous miners, I couldn't tell you any particular person.

(Testimony of C. A. Fox.)

Q. You cannot tell me the particular place, can you? A. In Juneau.

Q. When did you discuss that in Juneau?

A. A great many times.

Q. When did you last discuss it?

A. I think I was speaking to Mike Hudson five or ten minutes ago.

Q. He is a witness in this case, isn't he?

A. He might be, I don't know.

Q. You have discussed it with these other witnesses, too, haven't you?

A. I cannot say, I don't know who the other witnesses are.

Q. Tell me some other persons you have talked this over with.

A. I told you I talked with a great many people in general.

Q. How often have you discussed that in the last two years?

A. I will tell you—I am a man that talks a great deal about everything, but to tell you some particular person that I talked it with, that is a little too numerous for me.

Q. Did you ever hear any miners discuss this part of the rules and regulations—that the person entitled to the use may [873—723] change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe *of* aqueduct by which the diversion is made to a place beyond that where the first use was made—did you ever hear that discussed?

(Testimony of C. A. Fox.)

A. I think Dick Johnson and I discussed that years ago.

Q. Did you ever discuss this part—"A water appropriation may be turned into the channel of another stream and mingled with its waters and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished"—did you ever discuss that with anybody?

A. I couldn't tell you in particular; Mr. Johnson and I was thinking of taking up some water and we discussed the whole thing, what a person would have to do to comply with them.

Q. When did you do that?

A. A number of years ago.

Q. Did you have a copy of the rules? A. No.

Q. When did you first see a copy of these rules?

A. I think probably six or seven days ago.

Q. When did you see one before that time?

A. Never saw it before.

Q. You saw that to kind of brush up in the case, did you?

A. I didn't do anything of the kind; that was before I knew I was going to testify in this case.

Q. Who gave you those rules?

A. I asked somebody—I don't know just who—but I told them I would like to look over them.

Q. Who did you ask?

A. I couldn't tell you the particular person.

Q. Don't you know from whom you got the rules just a week ago?

A. I couldn't say positively who it was now, no.

(Testimony of C. A. Fox.)

Q. Is your memory good or bad, Mr. Fox? [874—724]

A. That is for the authorities to determine.

Q. You still remember conversations and things that took place 25 or 30 years ago, but just seven days you got a copy of these rules and regulations and you don't know from whom you got them, is that true?

A. Let me think a minute, because I will tell you honestly my mind isn't very good lately—let me think a minute.

Q. You cannot remember, can you, Mr. Fox—how came the person to give them to you—how was the subject brought up?

A. There was somebody talking about a book that Delaney had got out or had printed as a hand-book as the mining laws of this District.

Q. Where did the conversation take place?

A. It took place in Mr. Hellenthal's office.

Q. And Mr. Hellenthal gave you a copy of those rules to look over, didn't he?

A. I couldn't say that he did; it was somebody that was in the office; someone that had the book and I asked for it and said I would like to see one of those books.

Q. Did you discuss the matter in there then?

A. I did not.

Q. Did you discuss the matter before the rules were given to you? A. I did not.

Q. When did you discuss the matter with Mr. Hellenthal?

A. I didn't discuss it with Mr. Hellenthal.

(Testimony of C. A. Fox.)

Q. Whom did you tell you knew anything about these rules and regulations?

A. I guess that I have talked with every man I am acquainted with of the old-timers.

Q. Who subpoenaed you? A. The Marshal.

Q. How long ago?

A. Yesterday, I think. [875—725]

Q. You didn't know when Mr. Hellenthal handed you these rules to read over that you were going to be subpoenaed? A. No more than you did, no.

Q. That is the first time you ever saw those rules and regulations?

A. First time I ever saw the book.

Q. The first time you ever saw those rules in writing, or any way?

A. I never looked over the record.

Q. You don't know how long ago it was that you discussed these matters with Dick Johnson?

A. It was sometime in '96 or '7, along in there; we were going down to the Big Missouri.

Q. 1896? A. Sometime along there.

Q. Dick Johnson is dead now, isn't he?

A. Yes, I think so.

Q. Did you ever discuss this—that a water location shall state that the person claims the water there flowing to the extent of, giving the number, miner's inches, measured under a four-inch pressure—did you ever discuss that part of the rule?

A. I couldn't say positively that I discussed any particular part, but I have discussed the whole thing in general.

(Testimony of C. A. Fox.)

Q. With who else besides Dick Johnson and some of these witnesses that are here to testify did you discuss it?

A. Oh, I talked to quite a number of people in my time, since I have been in Juneau about these matters, but I couldn't pick out the place nor the people—that would be pretty hard to do.

Q. In the last six or seven days, though, you have studied over these rules?

A. I have done nothing of the kind.

Q. Didn't read them over?

A. I did read them over to see if they were the same as the general conversation and the general idea we carried among [876—726] each other, if they were the same as I remembered them.

Q. I wish you would tell some mining people besides Dick Johnson and Mike Hudson.

A. I can't think of a person.

Q. You can't remember?

A. No particular person.

Q. You came to Juneau first in 1881? A. '81.

Q. Left here and was gone how long?

A. I left in '84 and come back in '98.

Q. Were away 14 years?

A. I guess that is about right.

Q. While you were away that 14 years you didn't discuss anything about these miners' rules and regulations, did you? A. Not that I remember of.

Q. Have you been here ever since you came back from the Yukon, in the Harris Mining District?

A. No.

(Testimony of C. A. Fox.)

Q. When did you go out of the Harris Mining District next?

A. I left here—I don't remember just exactly the year, but six or seven years ago, I know.

Q. When did you come back then?

A. I came back September; it will be two years this September coming.

Q. And that is the only time that you have ever lived in the Harris Mining District, and you never took up a water right in your life, in Alaska?

A. No, sir.

Q. Did you ever know of any person to post any water location notice in Alaska?

A. Never have, no.

Q. Did you ever see either a mining or water location notice that was posted in Alaska?

A. Don't think I have; not to my memory; never was interested. [877—727]

Q. You never examined the records here to ascertain how many people complied with these rules respecting the taking up of water, did you?

A. None at all.

Q. You don't know how many of the notices would state that they took so many miner's inches of water under a four-inch pressure?

A. Never noticed any of the notices on any claims, that I remember of at all; never have been interested in any way at all.

Q. What do you do—do you work in your mine on Douglas Island?

A. I go up there once in a while; was up there last week.

(Testimony of C. A. Fox.)

Q. What else do you do?

A. I walk around, go home, and back and forth.

Q. What is your business?

A. I haven't any particular business.

Q. You are not doing any work except over in your mine? A. That is all.

Q. Do they adjoin any of the mines of the Treadwell Company? A. None whatever.

Q. On the same Island?

A. On the same Island.

Q. When did you locate that, did you say?

A. It was 1892 or '3, I think; I couldn't tell the date, or which year.

Q. 1902 or '3? A. Yes, along there.

Q. Those were the only claims you ever located in Alaska? A. I have located others.

Q. Where?

A. Big Missouri on Seymour Canal, Dick Johnson and I.

Judge WINN.—That is all.

Mr. HELLENTHAL.—That is all.

The COURT.—I understood you to say that you understood the rule to be in force at the time that when a man wanted to appropriate [878—728] water he had ten days to put up a location notice, and twenty days afterwards to commence work?

A. That was my understanding.

The COURT.—Had ten days to put up a notice—ten days from what?

A. From the time—I mean he had ten days from the time he had his notice up, his location notice, he

(Testimony of C. A. Fox.)

had ten days to get that on record.

The COURT.—That isn't what you said.

Q. That is what I meant to say.

The COURT.—That is all.

Recross-examination.

(By Judge WINN.)

Q. Do you know how many water location notices have been posted in the Harris Mining District where the locator has complied with the law in regard to recording his notice within ten days from the time he posted it?

A. I don't know; I don't know if he ever complied with the law or not.

Q. You don't know that that rule has ever been complied with, do you? A. No.

Q. You don't know whether the rule that he has to commence work on his water right within twenty days has been complied with on any water right, do you? A. No.

Q. You don't know whether there has been any forfeiture of any water right by reason of the man not complying with these rules? A. I don't know.

Judge WINN.—That is all.

(WITNESS EXCUSED.)

(Whereupon Court adjourned until 10 o'clock tomorrow morning.) [879—729]

MORNING SESSION.

August 1, 1914, 10 A. M.

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal MIKE

HUDSON, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Mike Hudson, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is M. Hudson?

A. Mike Hudson; yes, sir.

Q. You live at Douglas City? A. Yes, sir.

Q. Do you know where the Harris Mining District is, Mr. Hudson?

A. Well, I think I do; I don't know just where the boundaries are, but I know what is called the Harris Mining District.

Q. Do you know where the properties of the Alaska-Juneau Gold Mining Company and those of the Ebner Company and adjoining claims are in Silver Bow Basin? A. Yes, sir.

Q. Those properties are all in the Harris Mining District, are they not? A. Yes, sir.

Q. When did you come to the Harris Mining District, Mr. Hudson? A. Twenty years ago.

Q. What has been your business?

A. Well, mining mostly.

Q. Both prospecting and you have operated properties? A. Yes, sir.

Q. Acted as superintendent of properties?

A. Yes.

Q. Do you know what the laws and rules, local laws and rules of the miners in force and observed by the miners of the Harris [880—730] Mining District

(Testimony of Mike Hudson.)

relating to the appropriation of water and the acquisition of water rights have been during the time that you have lived in the Harris Mining District for the last twenty years?

A. When you ask me if I know, I know in a general way—I know what they are in a general way.

Q. Have you heard the rules read in evidence here from the Minute-book of the Harris Mining District relating to the appropriation of water? A. Yes.

Q. You were in the courtroom when they were read? A. Yes.

Q. How do those rules as they were read into the record compare with the rules that were generally observed by the miners of the Harris Mining District relating to that matter—that is to say, the appropriation of water and the acquisition of water rights, during the twenty years you have lived here, as to whether they are the same, or whether they are different? A. They are about the same, yes.

Q. And the observation of those rules has been general?

(Not answered because of objection.)

Q. Was the observation of those rules general by the miners, or otherwise? A. They are general.

Q. Generally followed? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Mike, you live on Douglas Island, don't you?

A. Yes, sir.

Q. When was the first time that you ever saw the

(Testimony of Mike Hudson.)

miners' rules and regulations which Mr. Hellenthal referred you to? [881—731]

A. Why, I don't know just how long ago, but some time shortly after Mr. Delaney had got those printed; I don't know whether they are the same ones that were read here or not, but in substance they were about the same the first time I ever saw them.

Q. Where did you get them?

A. I got a copy from Mr. Delaney.

Q. You got a copy out of Delaney's office?

A. Yes, sir.

Q. When was that?

A. I don't just remember how long,—it was about 1898.

Q. Before 1898 you didn't know anything about the existence of any such rules or any matter pertaining to any organization known as the miners of the Harris Mining District, did you?

A. No, not to speak of; didn't know anything about them, no.

Q. Now, when you say that these rules and regulations have been generally observed, Mike, do you mean that they have been generally observed throughout the length and breadth of the Harris Mining District?

A. All I know is districts where I have been—districts where I have been they have been observed.

Q. What part of the district have you been in?

A. Mostly on the Island—that is about the only place in the Harris Mining District.

(Testimony of Mike Hudson.)

Q. That is on Douglas Island? A. Yes, sir.

Q. Where the Treadwell Company has its mines?

A. Yes, sir.

Q. That is the mine that Mr. Kinzie is superintendent of?

A. Why, yes; that mine is on the Island, yes.

Q. How many times have you heard these discussed among the miners on Douglas Island?

A. You mean this question?

Q. Yes. [882—732]

A. Oh, I don't know. You mean this question that is coming up now?

Q. Yes, about any miners' rules and regulations?

A. I don't know; I have heard it a great many times from time to time—I couldn't say every time or how many times. Every time there was a question of water right comes up I heard it discussed.

Q. Do you know whether or not all the people on Douglas Island complied with this rule?

A. No, I don't.

Q. Have you ever located any water yourself?

A. Yes, sir.

Q. Where did you locate it?

A. I located on Nevada Creek.

Q. On Douglas Island? A. Yes, sir.

Q. Did you locate that in your own name?

A. I located it for the company I was working for.

Q. What company is that?

A. Alaska-Treasurer Consolidated mines.

Q. When did you make that location, do you know?

(Testimony of Mike Hudson.)

A. I don't know just what time—seems to me it was ten years ago.

Q. Have you seen that water location lately?

A. I don't know; I seen it something like three or four years ago.

Q. Did you have that water location notice recorded yourself?

A. I don't remember whether I did or not; I think that I did; I am not sure.

Q. Are you sure it was ever recorded?

A. Yes, sir.

Q. And is in the name of the Alaska-Treasurer Consolidated Mines? [883—733] A. Yes, sir.

Q. Do you remember the year it was recorded in?

A. No, I don't, but I know it was sometime after it was located—I don't know just how long.

Q. Did you locate for the Alaska-Treasurer Consolidated Mines by Mike Hudson, Agent?

A. Yes, sir.

Q. You recorded it yourself?

A. I don't know whether I did or not.

Q. You don't remember what time it was recorded? A. No, I don't.

Q. You don't remember what time it was recorded with reference to the time it was posted on the property?

A. No, I don't; of course, I think it was recorded shortly afterwards; I couldn't say now—I don't remember.

Q. Do you have any remembrance of bringing it over here and having it recorded yourself?

(Testimony of Mike Hudson.)

A. No, I don't remember; I don't remember whether I brought it over myself or not.

Q. Did you ever see a certified copy of it anywhere? A. No, I never did.

Q. Didn't you see it over here on the record books? A. No, I never done that.

Q. Then you couldn't swear positively as to whether or not the notice was ever recorded?

A. No, I couldn't swear positively that it was, but I believe it was—I have every reason to believe it was.

Q. I wish you would state to the Court, Mike, what you understand these rules and regulations that Mr. Hellenthal asked you about contain—just state to the Court what they contain.

A. My understanding of them is, when you locate a water right the first thing is that you must in a short time make some [884—734] natural use of it—locate it for some particular purpose of course, that he wants the water for.

Q. Well, what else?

A. There is not much else about the rules.

Q. You know the posting of the notice is usually resorted to? A. Yes.

Q. And that you commence work on it as soon as you can after posting the notice—that is, within a reasonable time you must commence some work?

A. Yes, sir.

Q. And then prosecute this work with diligence to completion? A. Yes, sir.

Q. Now, that is all, Mike, you know particularly

(Testimony of Mike Hudson.)

about those rules and regulations, isn't it?

A. Why, that is all I know except what I have read there, of course.

Q. And in your water location for the company over there you followed out this rule that I have mentioned? A. Yes, sir.

Q. You have never known, since you have been here, any difficulty over water rights on Douglas Island, or anywhere in the Harris Mining District, referred to any organization known as the Miners' Organization for settlement, have you?

A. No, sir; I haven't.

Q. You have never known any difficulty to grow out of or under the miners' rules and regulations about one man filing a location on any particular creek and another party filing a location on there afterwards, and any forfeiture claimed by the party who first filed by reason of not having complied with any rules and regulations—You have never known of any case of that kind to be referred to the miners, have you? A. No, sir. [885—735]

Q. And you have never known any such difficulty to come up among any of the miners, particularly on Douglas Island, have you? A. No, I haven't.

Q. Your knowledge has been limited to Douglas Island in this recording district, has it, Mike?

A. Yes; in this District.

Q. Did you mine anywhere before you came to Alaska? A. In the State of Washington.

Q. Did you ever do any mining in California.

A. No, sir.

(Testimony of Mike Hudson.)

Q. What did you do with the copy of rules and regulations you say you got from Judge Delaney's office?

A. I imagine I have got those yet, although I haven't seen it for some time—I imagine I put it away.

Q. When do you remember of having seen it last?

A. I haven't seen it—I don't remember, maybe six or seven years.

Q. You haven't made any location notices since the one you made on Nevada Creek? A. No, sir.

Q. Mike, have you any data at hand by which you could be sure about whose name this water right on Nevada Creek was located in?

A. Oh, there is no question about whose name it was located in, because I remember that in particular.

Q. And that was the Alaska-Treasurer Consolidated Mines, by Mike Hudson, Agent?

A. Yes, sir.

Q. And you think that was in what year?

A. I don't remember the year, but it is sometime about ten years ago.

Q. You don't know what became of the notice?

A. Oh, yes; the notice was nailed up on a tree at the place we [886—736] were taking the water out of the creek.

Q. I know, but the one that was recorded, what became of it afterwards?

A. I don't know myself; likely amongst the company's paper, I don't know.

(Testimony of Mike Hudson.)

Q. Do you know whether you can find it by search or not?

A. I couldn't have any idea because I have never kept track of those things; they have been turned over to the company.

Q. Do you know substantially what the notice contained in the body of it? A. Yes, I do.

Q. What did it have, as well as you remember?

A. Well, the substance of it was that we started at the point where the notice was nailed on the side of the creek, and followed there so many feet—I don't remember now—so many feet by a flume in a certain direction, and leaving that flume so many feet to a ditch at the point where we expected to use the water.

Q. Do you know what time after the posting of the notice you commenced work on the water right?

A. We were working on the water right the day I nailed the notice up.

Q. You commenced work before you put it up?

A. Yes.

Q. Did you ever hear the question discussed as to whether or not those rules and regulations were in force or adopted among the miners?

A. Yes, if you locate water you have to use it—that is the only talk I have heard on it.

Q. That is the practice you are testifying on?

A. That is the general understanding.

Q. You have to go to work with diligence to put the water to use? [887—737] A. Yes.

(Testimony of Mike Hudson.)

Q. That has been a conceded practice in the Harris Mining District? A. Yes, sir.

Q. And that is about as far as you know of the law in regard to the acquisition of water?

A. Yes; that is as far as I ever had any reason to know or find out.

Q. Are you sure that a man named Marks and somebody else didn't locate that water right of yours?

A. They located at a point sometime before that, but afterwards we decided we wanted to take it from another point than where they had it located and made another location, because they didn't take it from the point we expected to use it from.

Q. You put up your notice, though?

A. Yes, sir.

Q. Did you state in it the number of miners' inches you intended to take?

A. I am not sure that it stated so many miner's inches; I could not say at this time—I am not sure of it.

Q. Did you ever get any water right from a man named Fox over there on Nevada Creek?

A. No, sir.

Q. There isn't any other company operating on Nevada Creek on the lower side of Douglas Island except your company, is there, Mike—mining company? A. Nowhere, no.

Q. Did you ever know of Fox claiming any of the water on Nevada Creek?

A. Well, above our company I don't know—he

(Testimony of Mike Hudson.)

may have claimed it for all I know.

Q. Did Fox ever transfer any water rights to you? A. No. [888—738]

Q. Your water locations there were brought about just as you were testifying to here, when Marks and somebody else located some water rights some place on the creek and you got their rights?

A. Yes, sir.

Q. And then you wanted to take the water out at another point on the creek and then you went to work for that reason and put up another water location? A. Yes, sir.

Q. And had it signed in the way you have described here? A. Yes, sir.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Hudson, the record shows a location made by the Alaska-Treasurer Consolidated Mining Company, or manufacturing company, I don't know which, of 400 inches on Nevada Creek, August 2, 1904, the notice was located the same day in 1904—is that the location you referred to?

A. I think it was about that time; I don't know of any other location notice which I had for the Alaska-Treasurer Consolidated Mines.

Q. That is the location you referred to?

A. Yes, sir.

Q. Now, in making that location you say you stated the point where you took it out of the creek?

(Testimony of Mike Hudson.)

A. Yes; that was where the notice was posted.

Q. And stated the place where you were going to use the water? A. Yes, sir.

Q. And the use to which you were going to put it?

A. Yes, sir.

Q. As well as the quantity of water in miner's inches you were [889—739] going to take?

A. Yes, sir.

Q. Judge Winn has been asking you about the discussions you remember about this thing and has asked you whether the only things necessary were the posting of the notice, the commencing of the work and the prosecution with due diligence of the work—what do you say as to the recording of the notice?

A. It is generally understood it had to be recorded.

Q. Anything the notice had to contain, did the miners' rules describe that?

A. Yes; of course, I don't really know all that there is in the miners' rules, but my impression is that it must contain the amount of water you expect to use, where you expect to use it, and for what purpose—that is as far as I know.

Q. That was equally in force with the posting of the notice? A. Yes, sir.

Q. The Judge Delaney that you referred to from whom you got this pamphlet is the same Judge Delaney who, in his lifetime, owned an interest in the mines up here in the Basin, the Apex Royal and Enterprise mines, or do you know about that?

(Testimony of Mike Hudson.)

A. I don't know if he had an interest in them or not.

Q. Do you know of any mining claims that Judge Delaney had? A. I don't know of any.

Q. Do you know of an interest that Judge Delaney had in some property at Sheep Creek?

A. I don't know of any interest he had at all in mining.

Q. I hand you a little pamphlet, marked Plaintiff's Exhibit No. 33, and ask you to look at it and see if it is the same pamphlet Judge Delaney gave you, as you testified in response to Judge Winn's question?

A. Yes.

Q. That is like the one you got from Judge Delaney?

A. Yes, sir; that looks like it. [890—740]

The COURT.—Mr. Hudson, I want to ask you a question or two: You say that Judge Delaney gave you a pamphlet similar to that?

A. It looks like it, as near as I can remember; I haven't seen it for six or seven years—it seems to me it was like that.

Q. And you say that the rules contained in there, so far as the location of water is concerned, were in force when you came here?

A. Yes; that is, generally they were.

Q. You are a miner? A. Yes, sir.

Q. And wanted to be informed as to how to locate claims? A. Yes.

Q. And you were told by this mining attorney and owner of mines that those were the rules which were

(Testimony of Mike Hudson.)

in force at that time?

A. That was the only rules that I could find.

Q. Did you afterwards locate some water rights?

A. I did.

Q. Did you locate some mines? A. Yes, sir.

Q. Did you locate the mines in accordance with those rules, or in accordance with the law?

A. I located the mines and followed generally the form of location notice found in stationery stores, and I also got instructions as to whether it was a proper form or not, according to the laws of the United States.

Q. What I am trying to get at is this, Mr. Hudson—were those mining rules that are contained in this pamphlet—I mean in the way of locating mines, irrespective of water rights, but in the way of locating mines—were they in force at the time you came here?

A. I don't believe so, not at the time I came here; they had extended the United States mining laws for locating claims, and my impression is that was the way the mining claims were [891—741] at that time located.

Q. I want to know if you wish to be understood as saying that the mining rules were not in force, but that the water rules were in force?

A. That is the only water rules I know anything about; I don't know anything about any other water rules.

The COURT.—That is all.

(WITNESS EXCUSED.) [892—742]

(Testimony of Mike Hudson.)

The plaintiff, to further maintain the issues on its part, called as a witness in rebuttal GEORGE MILLER, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of George Miller, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live, Mr. Miller?

A. In Juneau.

Q. How long have you lived here?

A. Twenty-seven years.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. You have lived in the Harris Mining District for 27 years? A. Yes, sir.

Q. And during that time you have followed mining in a way? A. Oh, some.

Q. You have now some claims in Silver Bow Basin, haven't you? A. Yes, sir.

Q. In the Harris Mining District, have followed more or less mining during all of that period?

A. Yes, sir.

Q. Now, Mr. Miller, do you know what the local rules and customs of the miners relating to the appropriation and acquisition of water rights have been in the Harris Mining District during the 27 years that you have lived here, so far as they were observed by the miners and enforced by the miners

(Testimony of George Miller.)

of the district—just answer the question, Mr. Miller, whether you know what the rules were since you have been here? [893—743]

A. I never read the rules—just what I heard associated with miners here in the same business; I never located any claims in this country, but I am interested in claims; I am interested in water rights but never located any.

Q. You have been interested in water right claims?

A. Yes, sir.

Q. Do you know what the rules were with reference to the appropriation and acquisition of the rights of water?

A. I guess those were the rules.

Q. The question I am asking now is whether you know what they were? A. Yes, sir.

Q. Now, did you hear the water rules read here into the record from the minutes of the Harris Mining District here yesterday? A. Yes, sir.

Q. How do those rules as read into the record in your presence from the minute-book of the Harris Mining District compare with the rules that were in force here during the time that you have lived here—during the 27 years—are they the same or are they different?

A. Well, the interest I had in the water rights, we followed the rules—my partners located it, I think.

Q. Were those rules as read in evidence the same as they were in force here during the 27 years that you have lived here, or are they different?

A. They are the same.

(Testimony of George Miller.)

Mr. HELLENTHAL.—You may cross-examine.
[894—744]

Cross-examination.

(By Judge WINN.)

Q. What do those rules state, George?

A. Well, they locate the water, and record it, and get to work and use it—that is what we thought.

Q. Did you make any location notice yourself of water? A. No.

Q. Your partner made a location? A. Yes.

Q. Who was your partner, then?

A. This was in Porcupine.

Q. Oh, in Porcupine? A. Yes.

Q. Well, you followed the Harris Mining District rules when you located it up in Porcupine?

A. Yes, on the same line like what you had in that book here.

Q. You thought that those rules were in force in that part of the country too, did you?

A. Well, I never heard no kick about them.

Q. Do you know where the boundary lines of the Harris Mining District are, George?

A. Oh, I guess somewhere near Taku and Auk inlet.

Q. Who did you say your partner was that located the water up there?

A. That was Jack Bigelow, Al Smith and Ned Whitsaker.

Q. Where did you record those notices?

A. They were recorded in Porcupine, I think.

Q. And what you intend to state to Mr. Hellen-

(Testimony of George Miller.)

thal was, then, that these rules and regulations were followed in the Porcupine country? [895—745]

A. Yes.

Q. You never had anything to do with the location of water rights down around Juneau? A. No.

Q. I will ask you if you know whether or not Porcupine is in a different district from the Harris Mining District? A. Yes.

Q. And you were testifying to the customs that prevailed up in that part of the country, were you.

A. Yes.

Q. And that was all you were testifying concerning A. Yes.

Judge WINN.—We move now, if the Court please, to strike out the testimony of the witness as being incompetent and immaterial.

Mr. HELLENTHAL.—Let me ask the witness a question.

Q. (By Mr. HELLENTHAL.) The rules to which you have testified, George, the little book that you said you had with you—was that the book that contained the rules of the Harris Mining District?

A. I never had that book; I didn't have no book.

Q. Well, you have testified that you knew the rules of the Harris Mining District as well as the Porcupine District?

A. I heard the book read here yesterday, and that is about the same as was up there.

Q. The same as up where?

A. Up in the Porcupine.

Q. Did you know the rules, George, relating to

(Testimony of George Miller.)

the Harris Mining District, as well as the Porcupine District, not from your own experience in locating water rights but from conversations with miners and otherwise? [896—746] A. Yes.

Q. And those rules as read in evidence are the rules as you know them to have existed in the Harris Mining District? A. Yes.

Cross-examination (Cont'd.).

(By Judge WINN.)

Q. You never did read any of these little pamphlets that had these rules as laid down in that book until yesterday, did you, George?

A. Yes, yesterday.

Q. That was the first time you saw it?

A. Yes.

Q. You never had occasion to look up the rules and regulations as to locating water rights in the Harris Mining District—you had no necessity for looking them up, did you?

A. I always associated with miners and prospectors, and it is kind of a common conversation to tell what the rules are.

Q. When you had that common conversation, was that conversation about these rules that had “De-laney” written on them.

A. Used the old miners’ rules—the law we have here—I don’t know who got it out.

Q. When did you ever have a conversation with anyone, George, about these rules—that is, prior to say a week or ten days ago, when did you ever have any conversation with anyone about them?

(Testimony of George Miller.)

A. I had a conversation here in the courthouse and around the hotels in the lobbies.

Q. Around the courthouse and in the hotel lobbies—when did you hear any talk about it there?

A. Oh, for the last few days. [897—747]

Q. Since this case came on for trial?

A. Yes, I heard it in Mr. Hellenthal's office.

Q. You have been in Mr. Hellenthal's office?

A. Yes, sir.

Q. Were some of the other witnesses who have testified in his office? A. Yes, sir.

Q. And you people have been discussing it over and over there?

A. Well, I don't know if we were discussing it.

Q. Now, George, when and where was it before this case came on for trial, that you had any conversation with anyone pertaining to the water location rules—the water location rules and not the rules for staking out claims?

A. Oh, I heard them for the last 27 years around the hotels, when there were miners and prospectors stopping there and I talked with them and I heard it once in a while.

Q. Have you heard any talk about it in the last 10 or 12 years? A. Oh, yes.

Q. About what rules? A. Mining rules.

Q. Principally about mining rules, wasn't it?

A. Mines, and water and placer mines and general talk.

Q. They discussed matters as to what the law was? A. Yes, we heard lots of them talked.

(Testimony of George Miller.)

Q. Some would contend for one rule and some would contend for another rule, wouldn't they?

A. Well, I guess about the same about the location notices.

Q. Have you read these rules over since you were called upon as a witness in this case?

A. No, sir. [898—748]

Q. You have never seen the rules to read them at all? A. Just what I heard here.

Q. Now, before you heard them read in the court-room, you didn't know what the rules contained, did you?

A. What I know about those rules is about the location notice, and how many inches you want, and recorded them, and get to work—that is the rules we followed.

Q. After you have posted your notice you have to commence work within a reasonable time, don't you? A. Yes.

Q. And carry your work on? A. Yes.

Q. How long was it after you located your claims in Porcupine that you recorded your notice, do you remember?

A. Oh, yes, it was recorded right away.

Q. Did your partner do it or did you?

A. It was recorded before I got there, they were working on the water already.

Q. That was in Porcupine? A. Yes.

Q. You were not up there when the notice was put up? A. No.

(Testimony of George Miller.)

Q. You were not there when the notice was recorded? A. No.

Q. And you don't know anything about that other than what your partner told you?

A. Yes, and I went to work up there.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [899—749]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal GEORGE A. HOWE, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of George A. Howe, for Plaintiff (in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Captain, you live in Juneau? A. Yes, sir.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. How long have you lived in the Harris Mining District? A. Steady about 15 years.

Q. Living here off and on before that?

A. Yes, sir.

Q. What has been your business in the last 15 years, Captain?

A. Mining principally—mining and prospecting.

Q. Do you know what the miners' rules are that have been in force and observed by the miners during the past 15 years while you have lived in the district?

(Testimony of George A. Howe.)

A. Well, since I have been here I have always—

Q. Answer the question—you know what they were? A. I do; yes.

Q. Now, the question is what were those rules? (Objection and question not answered.)

Q. Now, Captain, as you remember the rules in force during the time that you have been here relating to the appropriation of water, what were those rules—tell the Court in a general way as near as you remember the rules—what was the first thing that must be done when you acquired water? [900—750]

A. The first thing was to locate, and so you would put your notice up that you were going to take this water out.

Q. Now, that notice—did it have to contain anything particular, as you remember?

A. According to the way we understand it and according to the rules that you have read here,—

The COURT.—Don't say according to the rules you have read—I want to know what was the rule.

A. We would post our notice on a stake that we wanted to take up the water rights, then so many days afterwards we would start to work to appropriate that water.

Q. How many days?

A. Well, so many inches to whatever we thought we would have to need for to work the mine with.

Q. That is the quantity of water you would take?

A. That is the quantity of water we would take, but we had to do extra work on that and still con-

(Testimony of George A. Howe.)

tinue as long as we could, otherwise we had no right to that water.

Q. How soon did you have to commence actual work?

A. About 30 days, had to start in to do actual work after the notice was posted, after you posted that notice, you had to do actual work on that to hold that water.

Q. That is your recollection?

A. That is the way I have always understood it amongst all of us.

Q. Captain, did you have to record that notice?

A. Sure, it had to be recorded the same as we had to locate our mines, the same way, and record them.

Q. *Have* long did you have to record the notice?

A. For a water-right notice at that time we only had 30 days to do it in. [901—751]

Q. How many days to record it?

A. Inside of 30 days.

Q. Do you remember, Captain, what the notice had to contain—state how much water you took and what else?

A. Sure; how much we wanted, how many inches we needed for our work.

Q. State anything else in the notice that you remember.

A. I don't know that I know of anything more than where we wanted to take that water out of the creek.

Q. And where you wanted to use it?

A. Where we wanted to use it.

(Testimony of George A. Howe.)

Q. What you are giving us now is your recollection of the rules, is it? A. Yes, sir.

Q. If you were going to locate a water right you would go to the rules and see if you were right?

A. Yes, sir.

Q. You would do that, Captain? A. Yes, sir.

Q. And those notices were recorded in the Recorder's office? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. How many times did you ever go to the Recorder's office to look at these miner's rules?

A. I have been to the Recorder's office and seen several.

Q. Several locations of water that you have recorded?

A. I never recorded any water, but the minute I do, I shall expect to do the work according to law.
[902—752]

Q. Then, you haven't had any occasion in the past to look up what the rules were?

A. Not lately I haven't.

Q. The first time you ever heard these rules read was in the courtroom?

A. It has all been spoken to us, but not the laws read to us, but us miners have all understood it to be that way.

Q. You never have taken up any water right, have you? A. I haven't; no, sir.

(Testimony of George A. Howe.)

Q. Your understanding was that when you did take up water you posted the notice that you described to Mr. Hellenthal, and commenced work within 30 days and had the notice recorded in 30 days? A. Yes, sir; certainly.

Q. And you thought the same rules that regulated mining claims were the same laws that regulated water rights?

A. That is the way I understood it.

Q. You have always understood it that in locating mining claims or water claims, that you absolutely had to post up your notice and record it?

A. Yes, sir.

Q. That is, 30 days after posting you had to record?

A. No; in regard to recording our claims, we have 90 days—a good reasonable time; now, if we are in the district here when we get up our notice we're supposed to do that as soon as we can instead of the 90 days, but if we are outside where we cannot get back, that gives us the 90 days to get our record in.

Q. You understand that to be the law from discussing the subject with many miners and locators?

A. I do; yes, sir. [903—753]

Q. Now, when do you remember before this trial was going on, of anything having been said about water location notices—when do you remember to be the last time which any conversation with anyone about water location notices was had by you prior to the coming on for trial of this case?

A. Quite a good many times.

(Testimony of George A. Howe.)

Q. About water rights? Now, you have never taken up any water rights?

A. That don't signify that we can't talk about these things because we haven't taken up any.

Q. I am asking you when and where was the last time you had any conversation about water rights before you were subpoenaed to come on this case?

A. Since this case has come up we have had a great many talks—it interests us all.

Q. That is the principal time that you heard the discussion of *of* water rights, isn't it? A. Yes.

Q. When, before this case was talked of do you remember that you ever had any talks about water rights?

A. Well, I have had talks here with several of the men—several of us have met together and talked about this water rights business.

Q. That is since the trial of this case—I mean prior, before that time, and before you ever heard anything about this case, when and where did you ever talk about water rights before?

A. I have talked about water rights with Mr. Wagner; I have seen where Mr. Wagner posted his notice on Salmon Creek, and I think it was about two or three years ago.

Q. Did you go all over this matter of how he had to do it, [904—754] and so forth, with him?

A. Well, it is all in his notice, he posted it on the point there at Salmon Creek.

Q. Did you talk with John Wagner in regard to what he had to do in order to get the water?

(Testimony of George A. Howe.)

A. We talked about it, how many inches he took out—I think where he has his dam now—he told me he was going to put a dam in there.

Q. What else did you talk to John Wagner about?

A. With John Wagner?

Q. Yes.

A. I have talked mines and mining with John Wagner—worked for him on the Boston group.

Q. State anything that was said about water rights—I don't want anything about mines?

A. *I* has been quite a while ago and I don't remember the very words that we said about it when we had the conversation, which was about water for the Salmon Creek mine.

Q. Who else did you have any talk with about water locations, Captain? You have given one man, now let's have another one?

A. Well, I don't know; I guess perhaps likely I have talked with Mr. Hellenthal.

Q. I didn't mean Mr. Hellenthal or any of the parties who are here?

A. I met him the other day and talked with him just the same as I would with you.

Q. That is since you are here in this trial you had this conversation? A. Yes.

Q. And was your conversation with Wagner before you knew anything [905—755] about this case? A. Sure.

Q. Who else did you have any conversation with before you knew anything about this case?

A. I had a talk with Mr. Waylock on Admiralty

(Testimony of George A. Howe.)

Island about taking up water rights, whether it was worth while to take up water rights; we didn't do enough work to prove whether it was worth while, and we gave it up.

Q. So that was about the extent of your conversation, Captain? A. Yes, sir.

Q. Do you remember anyone else that you talked with? A. Not that I know of.

Q. You didn't take up any water rights down on Admiralty Island, did you? A. No, sir; I did not.

Q. You have talked over these matters with Mr. Hellenthal quite a considerable—these matters of the local rules and regulations—since you were subpoenaed as a witness, haven't you?

A. No; no, sir.

Q. Did you talk over with the other witnesses about them?

A. No; I don't think we have since we come here in the courthouse; before that we had, but since the trial, no, sir; I don't think we had any talk since we come here.

Q. Now, you have given about all the conversations you remember of having with anyone about water rights in Alaska?

A. I think I have, Judge; yes, sir.

Q. Have you followed mining to any extent?

A. I have followed mining now for at least 18 or 20 years.

Q. Where have you been mining?

A. I have mined in the Yukon, I have mined in Nome and here. [906—756]

(Testimony of George A. Howe.)

Q. How long have you been mining in and about Juneau? A. About the last 12 or 15 years.

Q. Your work has been—

A. Working mines and prospecting, and working them.

Q. That is what is has consisted of?

A. Yes; that is what I am doing now.

The COURT.—Captain Howe, I want to ask you if you can tell me what is understood by this rule among the miners—what has been understood by this since you have been here; “Water privileges may be located, but such location shall not conflict with the interests of river miners”?

A. Such locations shall not conflict with river miners?

The COURT.—With the interests of river miners.

A. I presume that would mean that we wasn't to be allowed to dump anything in on to anyone else's claim to injure them.

The COURT.—There is nothing about dumping in this—“Water privileges may be located, but such location shall not conflict with the interests of river miners”?

A. Well, not to conflict with river miners—I don't exactly understand that, Judge.

The COURT.—What did the miners of the Harris Mining District understand by that?

A. I will tell you, I presume in this way—what you want to find out is this: I think that when we appropriated water as I have always understood it in the Yukon, but not here—wherever I have been,

(Testimony of George A. Howe.)

we take that water out, and we use that water, and we have to turn it back into the same stream, and we turned it back, and that is what I have always done ever since I have been mining.

The COURT.—That is your understanding of the rules and customs of the Harris Mining District, is it? [907—757] A. Yes, sir; the mining rules.

The COURT.—That where a man takes water out of the stream he has got to put it back?

A. They turn it back into the same stream below so that the next man can use it; that is what we have always done, and I can tell you where I have done it.

The COURT.—I don't care about that; I want to know what was the understanding and custom among the miners of the Harris Mining District?

A. That is the custom as I have always understood it, was in case I took the water out I had to turn it back into the same stream I took it from.

The COURT.—And unless the party taking the water out of the stream returns it to the stream, he has no right to it himself?

A. No sir; that is the way I understood it, always.

The COURT.—I didn't mean the way you understood it yourself, but I mean what do the miners of the Harris Mining District understand about that?

A. That is universal amongst us.

The COURT.—In the Harris Mining District and elsewhere? A. Yes, sir.

The COURT.—You have got to put the water back into the stream?

A. Back into the creek I took it out of; I did that

(Testimony of George A. Howe.)

in little , your Honor, and by the time some of us got it, it was pretty thick looking water—looked like mud; we all did that, put it right back in the creek. [908—758]

The COURT.—Well, Captain, have you thought about that very much?

A. Well, I always thought about it; I have been bothered a good deal since I have been here, and it made me mighty disgusted with the way we have been treated, the miners and prospectors—I have made locations here and come here in the town to record—

The COURT.—What I want to know is did you understand the custom and rules of miners in the Harris Mining District to be that a man could not take water away from the creek and not return it back into the creek?

A. That is the way I understand this water custom.

The COURT.—The custom of the Harris Mining District?

A. As I understand, and as the rest of us, always understood that, we had to do that, and that is as far as I can tell you.

The COURT.—Suppose a man had a mining claim three miles from Gold Creek, either side, and he wanted to use the water of Gold Creek to wash his gold out at this place three miles from Gold Creek, couldn't he take the water out of the creek according to the miners' custom?

A. That is a pretty hard question to answer, Judge, but according to what I have told you that

(Testimony of George A. Howe.)

when we used the water, if we use it from Gold Creek and we were working on Salmon Creek, of course according to our law we would have to put it back in there again.

The COURT.—Couldn't take it away at all?

A. I don't think you could—I don't know.

The COURT.—That is your understanding of the rules, is it? A. That is my understanding.

The COURT.—That is your understanding of the rules and the [909—759] customs of the Harris Mining District?

A. Yes, sir; I have located claims a good ways away from here and it has always been recorded in the Harris Mining District.

The COURT.—Well, now, Captain, you say that the rules and customs of the Harris Mining District require when you located water you should record your location within 30 days? A. Yes, sir.

The COURT.—Now, aren't you mistaken about that—didn't you have 60 days to record your water claim?

A. Well, I hardly think that; of course a good many of us would take it upon ourselves the sooner we do this thing the better it is for us, but as I say, if we are away—quite a ways away from here and there is no transportation to get back, we have 90 days for the recording of our claims, and I suppose it would be the same with the water, if we are away down here say 90 miles from here, sometimes we cannot get back here in time.

The COURT.—I am talking about the Harris Min-

(Testimony of George A. Howe.)

ing District. A. I understand what you mean.

The COURT.—Aren't you mistaken about having to begin work within 30 days—weren't you allowed 90 days?

A. No, sir; I think it is 30 days—that is, the water.

The COURT.—You are quite sure it is 30 days?

A. Yes; I am quite sure of that.

The COURT.—You are testifying to your recollection what the mining laws and customs were in the Harris Mining District? A. Yes, sir.

(Questions by Mr. HELLENTHAL.)

Q. In relation to taking the water away from the creek, that applied to placer miners on the creek below, didn't it? A. Yes, sir. [910—760]

Q. It wouldn't have any effect on taking water for power purposes, and for the operation of a mill, away from the creek, would it? A. I couldn't say.

Q. There was no custom among the miners on that subject? A. Not that I know of.

Q. The only thing you know of is that the lower placer miner may have water to wash his dirt with as against one who would take it from some other creek?

A. I don't know, sir; I said before I think that would be a question that would have to be decided, I should judge, in court; I wouldn't dare to say that.

Q. There is nothing in the customs of miners or in the rules of miners in this district that would prevent a user of water from taking the water away from the creek after he used it, for power purposes in connection with quartz operations, is there?

(Testimony of George A. Howe.)

A. Well, if you would like to have me answer that in my own way—

Q. You don't know of anything in the rules against that, do you?

A. Well, as I say, if you would allow me to answer that in my own way I will do so, if the Court would like to have me.

The COURT.—Very well, answer it in your own way.

A. Why, I would say in this way, that if the water was taken out of the creek for other purposes, taken away from the creek and diverted in any other direction, and it did not interfere or conflict with the miners below, but they would have plenty of water for to do their work, and it wasn't taken away from them and created an injury to them, I would not see why it could not be.

Q. Under the miners' rules, you may take the water no matter [911—761] what you want to use it for?

A. Provided that the miners below gets plenty of water for their use, I don't see why there would be anything against it.

Q. Now, Captain, the written rules that have been read here provide for the recording within ten days instead of 30?

A. You have 10 days to post your notice in and then inside of 30 days we had to do our work—commence actual work on the ditch in taking that water out.

Q. You don't understand my question, Captain—

(Testimony of George A. Howe.)

the written rules that have been read here from the minutes of the Harris Mining District provide that the notice must be recorded within 10 days after it is posted—are you sure you are not mistaken as to the time required—your testimony was, I think, that it was 30 days—could you be mistaken as to that, Captain?

A. I would like to have you ask that over again.

Q. The question I am asking is this: The written rules that have been read in evidence here provide that the notice should be recorded within 10 days after it is posted; as I recall your testimony, you said it must be recorded within 30 days after it was posted? A. Yes.

Q. Could you be mistaken as to that, that it was 10 days instead of 30 days?

A. Well, I might be mistaken about that; I couldn't say.

Q. You are just testifying from your recollection of what the written rules were? A. Yes, sir.

Q. And you might be mistaken? A. Yes, sir.

[912—762]

Mr. HELLENTHAL.—That's all.

(Questions by Judge WINN.)

Q. You never did see these rules or know anything about them—that is, the contents of them, until you heard them read here in the courtroom?

A. Not the rules as I heard them read, only as I understood from amongst the miners and amongst those I have talked with—that is what they told me and they have read these rules.

(Testimony of George A. Howe.)

Q. The custom, as you have understood it, up to the time you came to the courthouse here—the custom as you have understood it in discussing it with the miners, and so forth, is that they did have 30 days to record the water locations? A. Yes, sir.

Q. Before you came into this case that was your understanding? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) However, you know there were written rules upon the subject in the Recorder's office that would cover that subject?

A. I know there were written rules, but I never saw them, that is what I gathered from the older men that I talked with; I haven't seen any of them and haven't read them in fact.

Q. If they provide 10 days, that would be the time within which the recording had to be done?

(Question not answered because of objection.)

Q. Captain, you know that the rules that govern in appropriating the water have been reduced to writing and recorded in the recorder's office and those were the rules according to which the miners went?

(Question not answered because of objection.)

Q. What did the miners understand—from what you know about the miners and from your conversations with the miners as to [913—763] what governed in those cases, whether it was the written rules that were recorded in the recorder's office or not—whether those would be the things that would govern?

(Question not answered because of objection.)

Q. Do you know, Captain, where the rules were

(Testimony of George A. Howe.)

recorded or kept—where a record of the rules of the Harris Mining District were kept?

(Question reframed because of objection.)

Q. Do you know where that record was kept, Captain?

The COURT.—I don't think that is the proper question, Mr. Hellenthal—I will ask the question.

Q. Do you know whether or not those rules were ever recorded anywhere?

A. Why, we have always understood that they were recorded here in the Harris Mining District.

The COURT.—Whereabouts?

A. It would be here in the courthouse, or the old courthouse, the old one was burnt up, unless they were burned up in the fire—

The COURT.—Did you ever go to the records to see if there was anything recorded?

A. No, sir; I didn't see if there was anything there or not, only the miners told me that these things were here.

Q. (By Mr. HELLENTHAL.) The miners have always told you that those rules were on record here—is that right?

A. Sure, that is the way I have always understood it—filed away in the courthouse.

Q. And the rules—what were the rules that would govern the appropriation of water—the question I want to know is this, whether the rules that governed were the rules that were of record in the Harris Mining District?

(Question not answered because of objection.)

(Testimony of George A. Howe.)

Q. The rules that you referred to, which the miners told you were recorded with the recorder, were the rules that governed the appropriation and acquisition of water rights, of which you have testified?

(Not answered because of objection.)

Q. This is what I want to ask you, Captain—when you were testifying from your recollection of what the written rules were—you testified that your recollection was that you had 30 days in which to record; that is your testimony. Now, in saying that, were you giving your recollection upon what the written rules were upon the subject, or were you intending to testify that the written rules which required 10 days were not the law, but that there was a different rule that was in force upon that subject, and you were only giving your recollection as to what the rules were?

A. Just as I have stated it before, that the written laws were the rules that the miners told me were written, and in the hands of the recorder—that is all I can say.

The WITNESS.—Judge, may I speak a word here about books in regard to laws for miners?

The COURT.—If your counsel asks you.

Q. Was it the written laws that were recorded that were observed and were in force in the district?

(Question not answered because of objection.)

Q. What were the rules that were observed by the miners, as to whether they were the written rules or

(Testimony of George A. Howe.)

other rules—were the written rules observed by the miners?

A. That is the way I have always understood it; of course, we cannot get those books, all of us; there have been times here when I have come to get books in regard to the laws, and I could only find two, one in the land office and one in [915—765] the Governor's office, and I couldn't get either one, and I didn't know what to do; what is a man going to do when they pass laws and only send two books, one to the land office and one to the Governor—what are we to do; we are up against it in a great many ways.

Q. Now, Captain, your testimony as to what the rules were was a mere statement of your recollection of what the written rules contained, is that right?

A. I think I have already answered those questions several times.

Q. That is the way of it?

A. That is the way I understood it, and I don't see how I can say anything different.

Q. In other words, you didn't mean to say that these written rules were not observed in your testimony, as to your recollection—if your recollection differs from the written rules, your recollection is mistaken—is that right? A. Yes.

The COURT.—Captain, how old are you?

A. I am 65 years old.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [916—766]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal L. A. MOORE, who being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

Testimony of L. A. Moore, for Plaintiff (In Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is— A. L. A. Moore.

Q. You live in Juneau? A. Yes, sir.

Q. Do you know where the Harris Mining District is, Mr. Moore? A. I do.

Q. How long have you lived in Juneau?

A. 28 years; I came here on the 7th day of June, 1886.

Q. What has been your business since '86?

A. Mostly prospecting and mining; but of late years I haven't been so much engaged in that, however.

Q. You are getting older, Mr. Moore? A. Yes.

Q. When you came here in 1886 was the Harris Mining District an organized mining district at that time? A. Yes, sir; I believe it was.

Q. At that time were there any rules in this district, rules relating to the appropriation of water and the acquisition of water rights?

A. Yes, I understood so.

Q. Do you know what the rules were then in force by the miners [917—767] of the Harris Mining

(Testimony of L. A. Moore.)

District from the time you came here up to the present time, governing the appropriation of water and the acquisition of water rights?

A. I believe I do, to some extent, anyway.

Q. Those rules, were they published at any time?

A. Yes, sir.

Q. And the publication was in the hands of the miners? A. Yes, sir.

Q. Did you ever have in your possession any publication of that kind?

A. Yes; for a number of years I kept it very handy.

Q. How many years did you have that in your possession? A 15 or 20, I guess.

Q. I call your attention now to a pamphlet marked exhibit No. 33, and ask you to look at it and state how that compares with the publication you referred to as having been in your possession these many years?

A. I would say it is a copy, or exactly the same.

Q. Published by Judge Delaney? A. Yes, sir.

Q. Now, calling your attention, Mr. Moore, to the rules contained in that little pamphlet on the 5th, 6th and 7th pages of that pamphlet,—I do call your attention to the rules that occur on the 5th, 6th and 7th pages of that pamphlet referring to the rule relating to the appropriation of water?

The COURT.—You could not get to the examination of Mr. Moore to-day, and perhaps you had better not begin until Monday morning.

(Whereupon court adjourned until 10 o'clock Monday morning.) [918—768]

(Testimony of L. A. Moore.)

MORNING SESSION,

August 3d, 1914, 10 A. M.

L. A. MOORE, on the witness-stand.

Direct Examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. Directing your attention to those rules on these pages 5, 6 and 7, do you know, Mr. Moore, whether those rules as contained on those three pages to which I have directed your attention, and which are copies of the minutes of the Harris Mining District upon that subject that have been read into the record,—whether those rules were generally observed by the miners during the years that you have lived here, commencing from the time that you first came up to the present time, and if they were looked upon as the laws governing the appropriation of water?

(Objection to question.)

Q. You know in a general way what the miners have done, Mr. Moore?

A. Well, not definitely; I couldn't say positively from actual observation, but my opinion—

Q. The question is this, Mr. Moore, not what you have seen positively from seeing them do, but from what you know and from your intercourse with the miners, your talks with them, your conversations with them, your general meetings with them, from time to time, do you know from such intercourse and such meetings with the miners, as a miner among miners, do you know what the miners did in the way

(Testimony of L. A. Moore.)

of observing those rules?

A. Well, I will say I do not.

Q. Do you understand my question, Mr. Moore—I am not asking you if you know from actual observation or experience, but [919—769] do you know from your intercourse and the talks you have had with miners?

A. I have formed that impression.

Q. The question I am asking you, Mr. Moore, is not what you know from actual knowledge of posting water notices that you have done yourself, or have seen others casually do, but do you know from your conversations which you have had with miners and your talks that you have had with them, and what you know in a general way as a miner among miners in this district—do you know in that way whether the miners observed those rules or not?

A. Yes; I know from the conversations with them that is all.

Judge WINN.—I move to strike out all that part of the answer except where he said yes.

The COURT.—All that part of the answer except the word yes will be stricken.

Q. Now, Mr. Moore, when did you come here first, did you say? A. 1886.

Q. And you have lived here up to the present time?

A. Yes—well, I have been here every summer ever since.

Q. Did these miners of the Harris Mining District, since the year 1886 to the present time generally ob-

(Testimony of L. A. Moore.)

serve the rules relating to the appropriation of water as the same were read into the record from the records of the Harris Mining District, and as the same are to be found on the three last pages of the little pamphlet marked Plaintiff's Exhibit 33?

A. I think they did.

Mr. HELLENTHAL.—You may cross-examine.
[920—770]

Cross-examination.

(By Judge WINN.)

Q. Do you remember, Mr. Moore, of having testified upon this subject in the case of the Ebner Gold Mining Company against the Alaska-Juneau Mining Company when that case was on trial before Judge Cushman?

A. Yes, or something—I have forgotten what the case exactly was, but I know I was up here on some case connected with the water.

Q. I will ask you in that case if you did not testify as follows to the questions that were propounded to you by Mr. Hellenthal—Pages 1118 and 1119 of Volume 4 of Cause No. 2155 of the Circuit Court of Appeals—"Q. From what you understand about the customs, how can the right to the use of water in a running stream that has not been previously appropriated by anyone else be acquired? A. He can locate, make location of it, record it and divert it from the regular creek and return it again if he wants to, and state the number of inches you wish to take and where you are to use it and what for—keep a record of it."—Did you testify to that ques-

(Testimony of L. A. Moore.)

tion in that manner?

A. I presume I did; I guess that is pretty near correct, too.

Q. Now, then, you didn't say anything when you were testifying in that case, concerning any time for recording the notice, did you?

A. I don't *remer* that I did; *I know* whether I did or not.

Q. And your idea in testifying upon that case was that after one had appropriated water and put it to some use, he had to return it to the creek again—that was your idea when [921—771] you testified before?

A. Yes, but I suppose that would be optional with him—I don't suppose he would have to.

Q. Did you understand that to be the custom when you testified before?

A. If I testified before I most surely did.

Q. I will ask you if you didn't testify as follows in that case: "Q. Now, where water is running in a running stream but has not been previously appropriated by anybody else, how can anybody acquire the right to the use of the water running in such streams under the custom of the miners? A. No, not definitely—in practice, I don't, because I don't know of any instance where they have taken up water and used it or utilized it. I only know what I have seen and heard and read about it." You testified that way, did you?

A. Yes, I presume so.

Q. Now, you have been studying up that question

(Testimony of L. A. Moore.)

somewhat for this trial, have you not, Mr. Moore?

A. I looked over this little pamphlet.

Q. Who gave you the pamphlet?

A. A man by the name of Jack Barnes, as much as 15 or 20 years ago.

Q. Never did exhibit that pamphlet before, did you? A. Never until I was in court.

Q. Mr. Hellenthal asked you if you had one of those, did he? A. No, sir.

Q. You have read up on that pamphlet, though, since you have been subpoenaed here as a witness, haven't you? A. Oh, yes.

Q. You have talked over this matter with several of the other witnesses who have testified in this case, haven't you? [922—772]

A. No, sir; not about the facts of the case nor about the merits of it.

Q. Didn't you talk over with the other witnesses what you understood and what they understood the miners' rules were?

A. Only mentioned it to Mr. Hellenthal, I guess, in their offices once.

Q. Didn't you talk it over with any of the other witnesses? A. No, sir.

Q. Did you talk it over with any other witness?

A. No; I guess his typewriter was there.

Q. His stenographer was there—do you remember any other parties who were there?

A. He asked me only a very few questions.

Q. How many water locations did you ever take up?

(Testimony of L. A. Moore.)

A. Personally I don't think I have taken up any; I took up one but didn't afterwards file the notice for record; that is down in Snettisham, so I didn't consider that a location.

Q. You posted up a notice?

A. Yes, sir; but didn't carry it out.

Q. Didn't record it?

A. No, because I couldn't comply with what I thought were the requirements for appropriating it, and so forth, and recording it.

Q. Then, it was a fact, Mr. Moore, as you stated in your previous testimony, that you hadn't paid much attention to it, and didn't know definitely what the rules were because you had never taken up any water—that is true, isn't it?

A. Yes; that is true.

Q. Then, you have read this book over somewhat?

A. Yes.

Q. Because you have testified prior to this time about the rules?

A. I talked it over with miners in regard to what was the law, [923—773] of what you have to do and how you can take water and such things as that.

Q. When did you brush up your memory since the trial of Judge Cushman?

A. Since this case I read the book.

Q. You read the book and just concluded that those rules and regulations were the law on the subject, didn't you?

A. I said that was the rule we were all supposed to go by, as the rules made by the miners here in the

(Testimony of L. A. Moore.)

early days, and we didn't know what other rights we had to make locations.

Q. You haven't made any locations since the Snettisham location, of water, and that was in what year?

A. I don't know; there was some more there and I think my name was put in, but I don't know about it; I am not positive about that.

Q. Water locations?

A. The records would show; the party who was interested with me in making any mining claims might have located me in and put my name in; I don't know for sure about it.

Q. If they did you don't know anything about them? A. No; not positive.

The COURT.—When was that?

A. That was in '91, I located claims in Snettisham; and again in '96 I located claims—not myself individually, but myself and partners, four of them.

The COURT.—Did you have anything to do with the making of the notices?

A. I made most of the location notices, although I didn't mention the quartz claims.

Q. How many water locations do you know of your own knowledge have been made in the Harris Mining District, and were, after [924—774] posting recorded within ten days?

A. I couldn't say I know of any.

Q. Can't you say you know of a solitary one?

A. Of water, no.

Q. How many water location notices that you

(Testimony of L. A. Moore.)

know of have been posted, and which were afterwards recorded within 10 days, that the work of excavation was commenced on that water right within 20 days?

A. I cannot say now that I know of any.

Q. Never had any yourself, Mr. Moore?

A. I don't know very much about water locations.

Q. You don't know much about the customs of those people, whether they, in making a water location, followed the miners' rules or not, do you?

A. Only by general reputation and that is that they adhered to the miners' rules.

Q. Then, all you know about it is absolutely from hearsay?

A. Of course, if I would see the notices I would not read them to know definitely if they had commenced work, and so forth, even if I were to see the notices.

Q. Do you know of any contest that has ever come up between two miners claiming a water right, where one was forfeited because he had not followed the rules?

A. No; I don't know any instance of that kind.

Q. You came here in what year? A. 1886.

Q. Did you ever attend any miners' meetings that were held here after you arrived?

A. Well, there was one in town here in a building some place near where the Wolland Tailor Shop is; I went there and intended to stay, but a party came and informed me that my [925—775] boat was breaking up on the beach so I had to leave again, and

(Testimony of L. A. Moore.)

what was done there I don't know.

Q. Have you been engaged in any active mining enterprise since you have been in Alaska?

A. Yes.

Q. Where.

A. In St. James Bay; I done some work up on the Basin road; I done some work in Snettisham mine; also in Sumdum, also in Glacier Bay, and also in Windham Bay I had claims.

Q. That work was assessment work and prospecting.

A. Yes; assessment work and prospecting.

A. Never did any mining or milling of ores, did you, in Alaska?

A. No; we made a shipment of ore one time below, simply for a test, but it didn't amount to anything, only a few tons.

Q. When did you have your last experience in mining?

A. I have had experience in mining for many years; nearly all my life; New Mexico, Arizona, Nevada and Minnesota.

Q. When did you have this last experience in Alaska of this work that you testified you did on these mining claims?

A. That was all done in the early days, before the old courthouse burned.

Q. That has been how many years ago?

A. Well, 25, I should think, or somewhere along there.

Q. There has been a wonderful development in

(Testimony of L. A. Moore.)

the mining district in that time, in and about Juneau, hasn't there, Mr. Moore? A. Yes.

Q. It was somewhat in its infancy then, mining was, in Alaska?

A. I guess it was; yes, sir; except the Treadwell property.

Q. What do you remember, in 1886, when you came here, was going on up in Gold Creek Basin and Silver Bow Basin?

A. Individual placer mining in Silver Bow Basin, George Harkrader [926—776] and Archie Gamble, Henry Greer, and I don't know who else.

Q. All placer mining?

A. Yes; placer mining; they all had placer claims up there.

Q. Do you remember any quartz mining that was going on in what you term the Harris Mining District when you came here in 1886, outside of the Treadwell?

A. It seems to me Mr. Harkrader and Mr. Gamble were doing a little work up there on their property, whatever they called it, and one fellow by the name of Bennett.

Q. Did they have a mill?

A. Well, Archie Gamble had one—I don't know what he did at that time, some sort of a grinding mill.

Q. It was not a stamp-mill?

A. No, it wasn't stamps; it was some kind of a reduction—reduction quartz works; then there was another man put in a mill there—I have forgotten

(Testimony of L. A. Moore.)

his name—I think before Archie Gamble put his in, and it was carried away by a snowslide—I have forgotten his name, but it was in the same vicinity, however.

Q. That was about all that was going on in regard to quartz mining and mining at that time in the Harris Mining District, as well as you can recollect, Mr. Moore?

A. I think they were about the only mines there was any attention paid to at that time.

Q. Did you ever see any of the little books—

A. No, sir.

Q. The record books of the Harris Mining District?

A. No, sir; I never had any in my possession, and never looked them over.

Q. Here is one minute-book, Harris Mining District,—August, [927—777] 1881, to February, 1888—do you remember seeing that book at any miners' meeting that you ever attended? A. I didn't.

Q. Don't you know that in 1887 there was a miners' meeting held in Juneau, and that Lewis L. Williams was elected recorder of the miners' organization at that time?

A. I remember he was elected recorder—what date was this?

Q. 1887. A. Probably I wasn't here.

Q. "February 12, 1887, that a meeting was held to elect a district recorder for the Harris Mining District for the ensuing year; D. H. Murphy, Esquire, was chosen chairman, and John G. Heid, sec-

(Testimony of L. A. Moore.)

retary. There being no opposing candidates for said office of district recorder, upon motion of S. Lewis the rules were suspended and Lewis L. Williams, the present incumbent, was chosen the recorder by acclamation. On motion the meeting adjourned sine die"—do you remember of any such meeting having been held at that time, either by reputation or by having been present?

A. I don't know of having been present at that meeting; however, I know of Mr. Williams being the recorder.

Q. Now, I will ask you if at a meeting that was held on the 11th day of February, 1888, which is found at page 92 of this little book of records which I have just called your *attention*—at that time did the following take place: "The regular annual meeting of the miners of the Harris Mining District, Alaska, was held, pursuant to the regular call, at the courthouse, in the town of Juneau, Alaska, on the 11th day of February, 1888. Upon motion, J. G. Heid was chosen chairman, and John Olds, secretary. Upon motion of John Curry, Esquire, the rules were suspended and L. L. [928—778] Williams, the present incumbent of the office of recorder for said Harris Mining District, was elected by acclamation, for the ensuing year, as recorder for said Harris Mining District, Alaska. February 11th, 1888." Do you remember of any such meeting as that?

A. No; I don't remember of having been there; I was probably employed elsewhere then.

Q. Don't you know it was of general repute about

(Testimony of L. A. Moore.)

that time there was no other effort made after this election of Williams in 1888 as recorder—that that was the last act that was ever done looking towards keeping up what was called the miners' organization? A. Well, I don't know that I know that.

Q. You don't know of any other meeting ever having taken place after 1888, do you?

A. No, sir; I don't.

Q. Williams was elected for one year?

A. I suppose so; that was as long as they were elected for.

Q. Did you ever have any knowledge of any other election in 1889 to elect another recorder?

A. No; I don't remember; I wasn't around Juneau in those early days very much.

Q. Do you remember of an occurrence of this kind taking place, Mr. Moore: "That upon the first judge coming to this court and after you had several courts in Alaska, that a decision was rendered by the first judge that came here that the United States laws governed in all respects, and that the miners' rules and regulations had no more force and effect"—do you remember such a decision being rendered here some time after the organization of the court here—shortly afterwards? [**929—779**]

A. Yes; I remember there was that sentiment.

Q. That was a long time ago—the first court that came here? A. Yes; a good while ago.

Q. Now, don't you know that since that time, Mr. Moore, that no one ever has paid any attention to the miners' rules and regulations in this district?

(Testimony of L. A. Moore.)

A. No; I don't know—I don't know that they have, and I don't know that they have not—I don't know either way.

Q. When was the last time, Mr. Moore, that you had any conversation with any individual, or any aggregation of individuals, on this question of the custom and practice of the taking up and the appropriation of water?

A. Gracious, I don't know; it has been a great many times; I have been talking to people around town about this water business.

Q. I am not talking about that—leaving out the question of talking about this water case—give me a time that you have had any other conversation with any other person, and who the person was?

A. A person has mentioned something, and maybe made some little statement, merely mentioning it casually, but not with the intention of ascertaining any facts or giving any facts.

Q. Not specifically how it was taken up or discussing the rules in detail? A. No, sir.

Q. None of these rules—the three or four pages—was ever taken up and discussed by you or any other individual in your presence? A. No, sir.

Q. Just some few remarks were made about the custom of taking up water? [930—780]

A. That is correct.

Q. And that was a long time prior to this case?

A. Oh, different times along; and at the present time it has been mentioned, but I have taken no sides in discussing this matter.

(Testimony of L. A. Moore.)

Q. Prior to this case you didn't have any extended discussion with anyone as to the rules, in detail, did you?

A. No; not any particular discussion—might merely have mentioned it as we passed by and thought no more about it; that is all—I had no interest to talk about it.

Q. You had no interest to talk about it because you didn't have any water rights?

A. I had no water rights, and no interest in the whole business.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Moore, that decision of the Court at that time only went to the effect that the miners' meetings could no longer decide lawsuits, but that the Court should decide lawsuits—it had no effect upon the rules so far as they did not conflict with the laws of the United States, did it?

(Objection and question reasked.)

Q. That is true, isn't it, Mr. Moore—the decision of the Court only went to the jurisdiction or right of the miners' meetings to conduct hearings, and didn't go to the validity of the rules that were in force, did it?

A. I suppose it was left to arbitration.

Q. At the miners' meetings? A. Yes.

Q. And the decision of the Court was that these miners' meetings in deciding cases was succeeded by the courts themselves? [931—781]

(Testimony of L. A. Moore.)

A. Yes; that is my understanding; I don't know of any case that has been tried by arbitration since I have been here.

Q. That was the decision that you have reference to? A. Yes.

Q. And the decision did not go to the validity or invalidity of the rules, did it?

A. It says what the miners have to refer to if they got into a dispute about the water.

Q. The rules were in force at that time, though?

A. Yes.

Q. Do you remember of a case in which the Court instructed the jury on that point and told them to find a verdict for one side, and the jury found a verdict for the other side, and when the Court made the statement that he would set the verdict aside he was informed, absolutely, by the jury that it would not be healthy for him, and thereupon the Court left the jury alone—do you remember that?

A. I don't remember about that; I don't know whether I was present that time.

Mr. HELLENTHAL.—That's all.

(Questions by the COURT.)

Q. Mr. Moore, when was the last time that you located any mines in the Harris Mining District?

A. I think about 1900, in Glacier Bay—that would not be in the Harris Mining District.

Q. If you were going out to locate a mining claim now, would you locate it according to the rules contained in this pamphlet, Plaintiff's Exhibit No. 33?

A. If I was to locate a quartz claim, I would have

(Testimony of L. A. Moore.)

to comply with the United States mining law. [932—782]

Q. If you were going to locate a placer claim would you locate it according to these rules?

A. No; we have laws which I suppose have been enacted since that which we would have to adhere to—I suppose we cannot go against the United States law.

Q. Do you know whether or not this provision in this pamphlet is observed now: "Placer claims shall be subdivided into three classes, namely, creek or river, gulch or ravine, and hill." Do you know of any such subdivisions as that prevailing now among the miners as to placer claims?

A. I don't know in this district, your Honor, I guess they have such rules.

Q. They have that kind of rules in placer claims?

A. Yes.

Q. Do you know anything about this section—do you consider that this section is in force or that it has ever been in force: "Creek or river claims shall be 200 feet in length and shall extend from rimrock to rimrock in width." Do you understand that you have got to observe in locating claims—that you can only take 200 feet in length and that you must extend from rimrock to rimrock?

A. I would suppose that you could not take more than 200 feet in length unless you take it as the discovery, and then another 200 feet; and as far as being compelled to take from rimrock to rimrock, I don't know about that.

(Testimony of L. A. Moore.)

Q. "Gulch or ravine claims shall be 200 feet in length and 100 feet on each side of the center of the gulch"—is that regulation in force now, or was it in force in 1910—and "Hill claims shall be 200 feet in front, commencing where creek or river claims leave off and running back to the summit, or a distance not exceeding 1,000 feet"—was there [933—783] any such regulation as that in force in 1910?

A. Well, I couldn't say positively—I don't know of any instance, but I would suppose that was the rule; I don't know of any claims being located that way, because I don't know that there has been any hill claims located, excepting those located over placer—the Harkrader and Archie Gamble property was quartz, but how they located them, I don't know.

Q. Couldn't a man, in 1910, go out and locate a placer claim any way he wanted to, just so long as it didn't interfere with someone else's claim?

A. I suppose he could.

Q. Would he have to take 200 feet in length and 100 feet on each side of the center of the gulch if, for instance, it was simply in a gulch—now he goes out here and locates in a gulch would he have to, in 1910, take his claim 200 feet in length and 100 feet on each side of the center of the gulch—do you know of any such regulations as that—any such practice as that?

A. No, I cannot say that I know absolutely a practice of it, because I don't know anybody locating claims like that.

Q. "Section 5, Article 3—Each discoverer of new diggings shall be entitled to 200 feet by discovery

(Testimony of L. A. Moore.)

and 200 feet by pre-emption, in each river, creek, gulch or ravine that he or they may find gold on in paying quantities, providing the number is not to exceed four.” Do you know whether there was any such regulation as that in force and practice among the miners of the Harris Mining District in 1910?

A. Well, I couldn't say of any instance where it has been applied, but I know very little about the Basin and the placer work up there, because I have been in the Basin very little myself. [934—784]

Q. Do you know anything about this rule being in force in 1910 among the miners: “A miner is entitled to hold, if he represents according to the laws of the district, one river or creek claim, one bench or hill claim, and one gulch or ravine claim by pre-emption on each creek or river of the district; a miner can locate ground for not more than two *bona fide* partners and they must be residents of the district at the time of location.” Do you know whether any such custom or requirement was in force among the miners in 1910?

A. I don't know any instance of that kind being done, but I don't know how you would locate the bench claims unless you did it in some such manner as that.

Q. Of course you couldn't locate a bench claim if your bench wasn't away from the river, because if it was along the river it would be called a river claim. “A miner can locate ground for not more than two *bona fide* partners, and they must be residents of the district at the time of location.” Do you know

(Testimony of L. A. Moore.)

whether or not there was any such requirement or ruling or rule or custom or practice observed by the miners in the Harris Mining District in 1910?

A. Speaking of placers, I don't know whether they adhered to that or not; but in locating quartz I know in quartz claims that those were located by associates, and the parties were not present themselves.

Q. I don't mean being present, but it says a miner can locate ground for not more than two parties—was there any such regulation as that—rule, practice or custom?

A. I don't know whether it was or not—not more than two.

Q. “And they must be residents of the district at the time of location.” [935—785]

A. I am not definite on that, I don't know.

Q. Now, “Section 7—All claims shall be distinctly marked by placing stakes at each corner and giving such description by reference to some natural object or permanent monument that the claim can be easily found and its boundary lines readily traced.” Now, do you know of any such requirement—that the claim has got to have each corner marked—I mean by that, was there any such requirement as that in the Harris Mining District in 1910?

A. I think so—on all mining claims, I think, you have to have your four corners marked.

Q. Wasn't it allowed by the miners' customs to mark your two end corner stakes?

A. I never knew of any such practice; I don't

(Testimony of L. A. Moore.)

know that it was a practice in placer claims to mark all four corners, because as I said before, I don't know much about placers, but I supposed the claims are required by the United States laws to have four stakes.

Q. Now, in 1910, in the Harris Mining District, was there any such regulation, custom or practice as this: "The working season shall be from the 1st day of June to the 1st day of October. All placer claims must be represented during this time unless just reasons can be given for laying over claims as provided in these articles." Now, in 1910 was there any rule or custom about laying over claims in the Harris Mining District?

A. I don't know of any; it was a matter of compulsion to lay it over during the winter.

Q. What do you understand by laying over?

A. Deferring work until next season.

Q. If you did one hundred dollar's worth of assessment work [936—786] any time during the year on any kind of a claim wasn't that all that was necessary?

A. They could only work during the wet season—that is the only time they had, and then in the winter and the balance of the year they lay over until next season.

Q. Now, according to the custom of miners in 1910, suppose you didn't have any water on your claim for the whole season, would that exempt you from doing one hundred dollar's worth of assessment work?

(Testimony of L. A. Moore.)

A. If it was any fault of the elements that you couldn't do the assessment work, I suppose you could likely lay it over; I had trouble with the Indians in Arizona, and had to lay over because it was dangerous to try to operate the mine during the Indian outbreak.

Q. Now, was there any such rule or custom or regulation in force in 1910, in the Harris Mining District as this: "All placer claims that have been duly represented during the working season are laid over from the 1st of October until the following June"?

A. Well, I don't know whether it was a rule or practice or not, because I was very little in the Basin.

Q. What I am trying to get at, Mr. Moore, is this—the term laying over claims and representing claims, isn't that a Canadian term, and numbering claims so much above discovery and so much below discovery, and dividing them into creek claims and hill claims, and calling them all those names—isn't that a Canadian practice?

A. I wouldn't hardly think so; I think those were gotten up before there was much work done in the Canadian placers.

Q. Are there any claims out here on Gold Creek called No. 1 below discovery or No. 2 below discovery? [937—787]

A. No, I don't think they are located that way; I don't know if they did it here—I don't know just how they did work it.

Q. Has there ever been any custom here of laying

(Testimony of L. A. Moore.)

claims over and what you call representing claims—isn't it a fact that the only representation that a man has ever had to do in this country and in this district is to do his one hundred dollars' worth of assessment work during the year?

A. The only Government requirements, I think, on quartz claims, but as far as placer is concerned, of course, you had to do the assessment work on those, too; but in those early days I don't know what they did practice.

Q. But in those early days they still had to do one hundred dollars' worth of assessment work, didn't they?

A. Yes; I suppose they did it—I don't know, though.

Q. Well, now, in 1910, if, you wanted to locate a placer claim or any kind of a mining claim in the Harris Mining District, how long would you have to record it in?

A. I would record it within 10 days to be sure I was right.

Q. Record the mining claim within 10 days?

A. Yes; I would try to see that I was right.

Q. It is your understanding that according to the customs and laws of miners in the Harris Mining District in 1910 that a mining claim would have to be recorded within 10 days?

A. I suppose under the Government law it would have to be, but I don't know that that requires you to do that.

Q. But under these rules that you have spoken of,

(Testimony of L. A. Moore.)

did they require mining claims to be recorded within 10 days after they were located?

A. I don't know that they did; the mining claims and water they did, according to what I understand—they required that had [938—788] to be done—that is a local law only.

Q. On water claims? A. On water claims.

Q. How much time did you have to record mining claims in under the rules and regulations and customs of the miners?

A. A reasonable time, say 20 days; I think the law reads that way; it used to.

Q. Was that in force in 1910? A. I think so.

Q. That you had to record within 20 days?

A. Yes; it didn't say you had to, it says shall be recorded within a reasonable time, say 20 days—that is the way the Cox mining laws read.

Q. I am talking about the rules and customs of the Harris Mining District in 1910—was there any rule or custom as to when you had to record a mining claim?

A. I always supposed you had to record it within a reasonable time, 20 days, or such a matter; I don't know if you positively had to within that time to be within the local limit.

Q. But suppose you didn't record it within the 20 days?

A. Somebody might jump it and locate and you might get left.

Q. In spite of the laws of the United States?

A. Well, I *don't what* the laws of the United

(Testimony of L. A. Moore.)

States would be, whether it would be in spite of the laws of the United States or not; I suppose the laws of the United States gives the time that you should do it in by saying a reasonable time, or 20 days, or something like that; I suppose that you should record it within that time or forfeit your rights; I don't know about that exactly.

Q. I am not talking about what you know exactly—I want to *know the* custom or practice among miners was in 1910? [939—789]

A. Well, I guess those mostly adhered to that practice.

Q. Now, Mr. Moore, do you know of any custom among the miners in 1910—or any understanding among the miners in 1910 to the effect that the mining rules and regulations in this pamphlet had been superseded by the Federal laws, but that nevertheless the regulations as to water were still in force—do you remember any distinction being drawn between them?

A. No, I don't; I don't know of any instance where that occurred.

Q. Did you ever, since you have been in the Harris Mining District, know or hear of a controversy between miners as to the relating back of their water claims—as to when the rights to the water claims related back?

A. Priority of claims? No, I don't know that I have; no.

Q. Did you ever know in the Harris Mining District of a water location being forfeited for failure

(Testimony of L. A. Moore.)

to record it within 10 days? A. No, sir.

Q. Did you ever know of any contest before this time in the Harris Mining District between two locators of a water claim?

A. There was some contest in the Basin between—Oh, I don't remember, I think Archie Gamble; I don't know but what Harkrader was interested.

Q. Was that before 1910?

A. I don't remember; it was a long time ago.

Q. Was that before 1900?

A. I don't remember.

Q. Was it before 1888?

A. No, I don't think it was before '88, because I came here in '86, and that would be two years afterward, and I hardly think it was—I think it was after that.

The COURT.—That is all. [940—790]

(Questions by Judge WINN.)

Q. Let me see if I can refresh your memory on a question I asked you a while ago, Mr. Moore—do you remember after you came here of a man by the name of George that undertook to sue Johnny Olds—that is, in the first place he resorted to some miners' rules and regulations to enforce some right that he claimed Olds was violating; there was some disagreement up in the Basin arose between George and Olds over a mining claim, and they undertook to resort to the miners' rules and regulations, and afterwards a suit was brought in the court before Judge Dawson, and in the trial of that case Johnny Heid represented one of the parties and he undertook to introduce the

(Testimony of L. A. Moore.)

miners' rules and regulations for some purpose, and some right under them, and Judge Dawson held that they couldn't enforce the miners' rules and regulations in that case, and that they had no jurisdiction and that the case had to be tried in the courts the same as any other case?

A. I remember something about the case, but I don't believe I was present at the time; I don't remember being at the courthouse or at the trial, anyhow.

Q. That is you heard that some such trial did occur, because of some controversy among the miners because they wanted to enforce the rules and regulations, didn't you?

A. I don't know what the occasion was; I know there was such a case.

Q. You don't know what the Court held, do you?

A. No.

Q. (By Mr. HELLENTHAL.) You say, Mr. Moore, you don't know what the contention between the parties in that case was? A. No, I don't. [941—791]

Q. And you don't know what the Court held?

A. No; I don't know what the Court held, because I wasn't present, and I am satisfied of that, although I have heard of the case and probably read it.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [942—792]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal WILLIAM HARRIS, who being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of William Harris, for Plaintiff (In Rebuttal)

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is William Harris? A. Yes, sir.

Q. Did you know Richard Harris in his lifetime?

A. I did.

Q. He was your uncle, was he not, Mr. Harris?

A. Yes, sir.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. When did you come to the Harris Mining District?

A. I came here in February, 1882.

Q. At the time you came here was the Harris Mining District an organized mining district?

A. Yes, sir.

Q. Did you find at that time rules in the Harris Mining District relating to the appropriation of water? A. Yes, sir.

Q. Did you become familiar with the rules that were then in force in the Harris Mining District?

A. I think I did; yes, sir.

Q. Where were those rules kept—a record of them kept—were they in writing?

A. They were in writing; yes, sir.

(Testimony of William Harris.)

Q. Where was the record of them kept? [943—793]

A. I couldn't say who the recorder was at the time I came here.

Q. But were they kept with the recorder—what officer were they kept by?

A. I couldn't say as to that; I don't know where the recorder's office was.

Q. You say you don't know who the recorder was—what I am asking you is this: Who the officer was that they were kept by, whether he was the judge or what office did he hold? A. The recorder.

Q. At that time were those rules published in any way, and were the copies of that publication in circulation?

A. There was a copy—that is, there were copies of the old original locations.

Q. Rules? A. Rules and locations.

Q. Did you have a copy of those original rules—were the copies in circulation at that time?

A. Yes; I used to have a copy.

Q. How long have you lived in the Harris Mining District?

A. I come here in '82, and I stayed here four years and then I went below, and came back to Cook's Inlet in '96; came back to Juneau then in '97, and left Juneau in '97 and went to Dawson; stayed in Dawson three years, went from Dawson to Nome, then went over to Cook's Inlet—stayed in Dawson three years; went from Dawson to Nome and stayed

(Testimony of William Harris.)

there three years, and back here and have been here ever since.

Q. Now, do you know whether those rules that you found as being in force in the Harris Mining District relating to the appropriation of water were observed by the miners during the various periods you have lived here since you first came? [944—794]

A. Well—

Q. You are a miner by occupation, aren't you?

A. I am a placer miner by occupation.

Q. Now, you may answer the question.

A. I think I did observe them, yes.

Q. I will now ask you, Mr. Harris, whether the written rules that you found in force at the time, are they the same rules that were read into the record—did you hear them read into the record here when Mr. Wells was on the stand?

(Not answered because of objection.)

Q. Let me ask you this question—you heard the minutes of the Harris Mining District read while Mr. Wells was on the stand?

A. I think I heard part of it.

Q. Did you hear the rules relating to appropriating of water read into the evidence?

A. I think I did; yes.

Q. Those rules as they were read in evidence the other day in your hearing, how do they compare with the rules that you found in force in 1882 when you came here, and the rules which you say were recorded in the recorder's office—were they the same rules or were they different?

(Testimony of William Harris.)

A. As near as I can recollect they were the same rules.

Q. Now what do you say as to whether or not the miners generally, in the Harris Mining District during the period you *you* have lived here, from the first time you came up to the present time, observed those rules?

A. Well, I cannot say up to the present time because I haven't been in placer work for a few years, but for the four years I lived here and was in active placer mining they were observed up to that time; since then I don't know; I hear [945—795] them discussed *one* in a while, but I don't know.

Q. You have not been actively engaged in mining in the last few years?

A. No; not in the last few years.

Q. And for that reason have no direct knowledge upon the subject?

A. That last placer mining I done was eight or nine years ago, I done for Mr. Kinzie in Silver Bow Basin,—that was the last mining I done.

Q. And what the rules have been since that time you do not know? A. No.

Q. But up to that time these rules relating to the appropriation of water were in force, were they?

(Question not answered because of objection.)

Q. Now, do you remember of any controversy decided under these rules relating to water appropriations before a miners' meeting in the Harris Mining District in the early days?

A. Yes; I recall one instance.

(Testimony of William Harris.)

Q. Who were the parties?

A. My uncle was one of the parties; my uncle and Joe Juneau—R. D. Harris and Joe Juneau and another party had a dispute over some water in Quartz Gulch, but who the party was I don't know; it was a great many years ago, it was directly after I came here and I don't know who the other parties were—they held a miners' meeting over this water.

Q. Your uncle at that time had taken the water out of the creek that flows down Snow Slide Gulch—that is the same gulch, isn't it?

A. Yes; they were building a dam to throw the water over the snow slide side of the mountain into Quartz Gulch; [946—796] that is right close to where the little Alaska-Juneau small mill now is.

Q. Now, where was the water taken from in Snow Slide Gulch?

A. It was taken from a number of little small streams; we used to call them pup streams.

Q. Did they take in the creek that flows down Snow Slide Gulch? A. Yes, sir.

Q. And where was the water taken to?

A. It was taken away over the hill to Quartz Gulch.

Q. Taken away from the creek in Snow Slide Gulch? A. Yes, sir.

Q. And was it returned there? A. No, sir.

Q. What was the result of that meeting as to who was held to be entitled to the water?

(Question objected to and not answered.)

Q. Do you know whether there was any written record of that decision?

(Testimony of William Harris.)

A. I don't know; I couldn't attend the meeting, and they wouldn't allow me to have a vote in it.

Q. The other party that was claiming the water against your uncle, where was he mining?

A. At the foot of Snow Slide gulch.

Q. He was mining at the bed of the creek that the water was being taken out of? A. Yes, sir.

Q. Now, in whose favor was that case decided?

(Question not answered because of objection.)

Q. What was the point in dispute in that case?

(Not answered because of objection.) [947—797]

Q. Did you have an intimate knowledge of the litigation between the parties?

A. I heard them discuss it.

Q. The parties themselves?

A. The parties themselves.

Q. And the parties that attended the miners' meeting? A. Yes, sir.

Q. And you knew from the people on the ground what the dispute between the parties was about?

A. Yes, sir; I was working on the ditch at the time.

Q. And were right there when the thing was decided—I mean right in the near vicinity?

A. I was working on the ditch; I didn't quit, I kept working just the same.

Q. Did the people generally all know what the case was about? A. Yes, sir; I guess they did.

Q. Was there any dispute as to what the point at issue was? A. What is that?

(Testimony of William Harris.)

Q. The people all agreed as to what the case was about?

(Not answered because of objection.)

Q. Now, do you know what the dispute was between your uncle, Mr. Harris, on the one side, and his partner on the other at that time about the mining claim in Snow Slide Gulch, where each party claimed to have a right to the water?

A. Both parties claimed the water; that was how the dispute came up.

Q. Do you know why each party laid claim to the water—on what grounds, now, did they claim the water?

A. Why, my uncle claimed the water by prior right, that he had worked a little while on the ditch the year before; the other party claimed the water as the water flowed down [948—798] the hill, and claimed that he had to turn the water back—the other fellow claimed that my uncle should turn the water back into the creek.

Q. He was a creek miner under your uncle's ditch in Snow Slide gulch? A. Yes, sir.

Q. Below the point where your uncle took the water out? A. Yes, sir.

Q. Now, they had a miner's meeting to settle that question? A. Yes, sir.

Q. You were not present at the meeting?

A. No, sir.

Q. After the miners' meeting had decided it, do you know what the decision of the meeting was—not what you heard at the meeting, because you were not

(Testimony of William Harris.)

there, but from what you learned after the meeting was over?

(Question not answered because of objection.)

Q. After the miners' meeting was over, who held the water right? A. My uncle.

Q. And finished his ditch?

A. Finished the ditch and built a dam.

Q. And did he turn it back to the other fellow?

A. No, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. When did you say this took place, in what year?

A. That took place in 1883.

Q. When did you first come to Juneau?

A. In 1882. [949—799]

Q. How long did you stay here then?

A. I stayed here four years.

Q. Where did you see any miners' rules and regulations printed at that time?

A. They had a few pamphlets around—little small books, little sized books like I saw exhibited here; I had one of those books.

Q. Where were they printed?

A. I don't know where they were printed; they had them here.

Q. In 1883? A. Yes, sir.

Q. And you left here in what year?

A. I left here in 1886.

Q. In 1886? A. Yes, sir.

Q. Did you locate any water while you were here

(Testimony of William Harris.)

during that first stay? A. No, sir; I couldn't.

Q. You couldn't? A. No, sir.

Q. Why? A. I was too young.

Q. How old were you then? A. 19 years old.

Q. Did you think that was one of the miners' rules and regulations, prohibiting you from locating water?

A. I didn't know anything about it only what my uncle told me, I was too young.

Q. You supposed that came under the miners' rules and regulations pertaining to water? [950—800]

A. He said it would be contested if I took it up.

Q. How many location notices do you know of having been posted in and about the Harris Mining District locating water while you were here that first stay?

A. Well, I know of several my uncle had on his ditch in Snow Slide gulch, I noticed his claims staked, and noticed Mr. Harkrader's claim and different places, but it is a good while back and I cannot just recollect.

Q. You were too young then, weren't you, to learn anything particularly about the rules and regulations, when you first came here?

A. I don't think I was any too young as far as that is concerned.

Q. What else do you remember about the miners' rules and regulations as they were then understood, such as posting the notices—do you know anything about that?

(Testimony of William Harris.)

A. I don't know as I paid any attention to the rules any more than what I saw carried out.

Q. And what you saw carried out was that you saw some notices posted up there on your uncle's ditch, and then you were working up there for him?

A. Yes, sir.

Q. That was about all that you ascertained pertaining to mining or any mining rules or water location notices at that time? A. Well, yes.

Q. You didn't work for anyone else at that time here, did you,—any mine?

A. No, not for miners—well, I did work some up here for Charley Wells; that is hydraulic mining.

Q. During the first stay? [951—801]

Q. You didn't record any water location notices for water yourself, did you?

A. No, sir; never a location of water in the Harris Mining District.

Q. Never did have one yourself? A. No, sir.

Q. Never did record one? A. No, sir.

Q. You don't know what these parties that have been locating water, taking up water have done—you haven't kept any track of how they were doing it or for what purpose? A. Not since that time.

Q. Not having located any water yourself since that time or at that time, you have never given these rules any particular notice until they came up in court in the trial of this case, have you?

A. Yes; I think I have, because it has been my business, following placer mining up until I came back from Nome, and the water rights and things like

(Testimony of William Harris.)

that go with placer mining, and naturally if I was going to make a location anywhere in the country I would have to be posted on the ways to make it; in Nome, of course, the laws are probably a little different from what they are here in Juneau, and in Dawson they are a little different.

Q. You left here in 1887, where did you go?

A. Sir?

Q. Where did you go when you left here in '87?

A. 1886, you mean?

Q. 1886, yes. A. Colorado.

Q. Did you follow mining back there? [952—
802] A. Yes; I did.

Q. Placer mining?

A. I was in Leadville for a while.

Q. How long was it before you came back to Alaska?

A. I left here in 1886 and came back in town in 1897; I had been up to Cooks Inlet prior to that, but came back to Juneau in '97.

Q. How long did you stay here after 1897?

A. I came here along about the first of the year in '97, and stayed here until August, 1897.

Q. You didn't locate any water or do any placer mining in Juneau during that stay, did you?

A. No, sir.

Q. And you had no occasion to look into any rules or regulations about water or locating mining claims while you were here that time, did you?

A. No, sir.

Q. Then you went to the Yukon, did you?

(Testimony of William Harris.)

A. Yes, sir.

Q. You did some placer mining in there?

A. Yes, sir.

Q. They have certain rules and regulations that you follow in there, haven't they? A. Yes, sir.

Q. From the Yukon where did you go?

A. From Yukon I went to Nome.

Q. Nome, Alaska? A. Yes, sir.

Q. Did you do some placer mining there?

A. I did.

Q. How long did you stay there? [953—803]

A. Three years.

Q. Then where did you go?

A. I came back to Juneau.

Q. What year? A. I think that was in 1894.

Q. 1894? A. I think it was that.

Q. Have you done any placer mining around Juneau since 1894?

A. Yes; since I came back I done work for Mr. Kinzie, doing some placer work up at Silver Bow Basin.

Q. Mr. who? A. Mr. Kinzie.

Q. What year was that?

A. I believe that Mr. McDonald, if I am not mistaken, was the superintendent at that time.

Q. You didn't make any location of placer claims or water rights yourself? A. No, sir.

Q. And you had no occasion to look up the miners' rules and regulations, or make any inquiry about them at that time, did you?

A. No; I thought I was pretty well posted on the

(Testimony of William Harris.)

laws in this part of the country, and I didn't pay any attention to it; I haven't done anything since.

Q. You haven't paid any attention to any rule, custom or regulation of the miners' at all pertaining to the acquisition of water or placer mines?

A. No, sir.

Q. You say that you saw some rules and regulations that were printed when you came here in 1882 or '3? [954—804].

A. Yes, sir.

Q. Do you remember of having read them over?

A. Yes; I read them over.

Q. When do you remember seeing that copy that you had at that time last?

A. The last time that I saw the copy, I had it among my effects on a little creek up close to Nome; I had my whole outfit burned and I lost it then, and I haven't had one since.

Q. You followed those rules and regulations while you were in Nome, did you?

A. I took them along; I thought they would be pretty handy.

Q. Did you have them when you were mining in the Yukon?

A. Yes, sir; I took them along with me.

Q. You thought they might be of some assistance to you while you were in the Yukon and some assistance to you while you were in Nome?

A. Yes, sir.

Q. Pertaining to water and placer mining?

A. Yes, sir.

Q. And the use of water in placer mines?

A. Yes, and quartz and everything.

(Testimony of William Harris.)

Q. Now, what do you say this dispute between your uncle and someone else was about?

A. It was over the rights of the water.

Q. Over the water rights? A. Yes, sir.

Q. On Gold Creek?

A. Yes, sir; and its tributaries.

Q. You were working up there at that time for your uncle? A. Yes, sir.

Q. And that was in 1883? [955—805]

A. Yes.

Q. Where were you mining, in Gold Creek?

A. No, sir; we were mining in Quartz Gulch.

Q. Quartz Gulch? A. Yes, sir.

Q. You were using the water of Gold Creek, then, in mining? A. Gold Creek?

Q. Yes.

A. No; we were not using the water of Gold Creek.

Q. What water were you using in mining?

A. We were taking water up over this side of the mountain from Snow Slide Gulch.

Q. From what streams?

A. A lot of little streams.

Q. And this other fellow that was opposing him had a mining claim down in Gold Creek?

A. In Gold Creek.

Q. And he didn't want your uncle to use that water that came down the hillside for working his claims? A. Yes, sir.

Q. And your uncle claimed that he took it up first and he used it first? A. Prior right, I said.

Q. He had a prior right under the miners' rules?

(Testimony of William Harris.)

A. Yes, sir.

Q. You were not at the hearing that took place before the miners' meeting, were you?

A. No, sir; I was working on the ditch.

Q. Did you ever attend any one of those meetings while you were here? A. I did not. [956—806]

Q. Do you know where they held the meeting while you were here on that first trip before you went away in 1886? A. I do not.

Q. You do not remember who was recorder?

A. No; I do not.

Q. In fact, not being at the meeting, you don't know whether they had any books of record or not, do you? A. No.

Q. You never saw any?

A. I heard the miners discussing it, talking about the records and the law, and they had these little pamphlets, and that is all I know about it.

Q. Now, when you came back here—when was that, 1897—did you say you came back to Juneau next?

A. I went in to Dawson in 1897—about 1904, somewhere along there.

Q. You never heard of any miners' meetings and miners' organization since that time, have you?

A. No.

Q. And you had no occasion to take up any water or water rights in and about Juneau, and you never discussed the matter to any extent, did you?

A. No, sir.

(Testimony of William Harris.)

Judge WINN.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. The man with whom your uncle had the dispute Judge Winn asked you, I think, whether or not he owned a claim in Gold Creek—his claim was situated in Snow Slide gulch, was it not, above Gold Creek? A. Yes; in Snow Slide gulch.

Q. That is in the bed of one of the streams from which your [957—807] uncle took the water?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Questions by the COURT.)

Q. Mr. Harris, when was the last time that you saw a water location notice?

A. Well, in this district?

Q. Yes.

A. I haven't saw one that I could be positive of since 1886—that I would be positive about.

Q. Not within the last eight years?

A. Not since 1886.

Q. Whose location notice was that—what water location notice?

A. The location of my uncle and Mr. Harkrader and a few of the men that were working up in the basin at that time.

Q. Were they recorded?

A. I could not swear to that.

The COURT.—That is all.

(WITNESS EXCUSED.)

Mr. HELLENTHAL.—Our other witnesses in rebuttal are not present, your Honor.

(Testimony of F. J. Wettrick.)

Judge WINN.—Then we will go on with our case in chief after lunch.

(Whereupon Court adjourned until 2 P. M.)
[958—808]

AFTERNOON SESSION.

August 1, 1914, 2 P. M.

The defendant, to further maintain the issues on its part, recalled as a witness F. J. WETTRICK, who, having been previously sworn, testified on oath as follows:

Testimony of F. J. Wettrick, for Defendant (Recalled).

Direct Examination.

(By Judge WINN.)

Q. Mr. Wettrick, there are a couple of questions that I would like to ask you on direct examination. When you were on the witness-stand before, Mr. Hellenthal was questioning you considerably about this brushed-out trail or lower side line of the Lotta claim as it was in 1908 and 1910, and some questions were asked you as to whether or not it could be found or distinguished from the other surrounding ground by anyone walking over the property—I wish you would explain to the Court, in 1910, and prior to August 1st, as to whether or not anyone walking over that portion of the ground covered by the clearing out could distinguish it from the surrounding ground?

A. One could very easily find the lower side line of the Lotta as brushed out, because of the large amount

(Testimony of F. J. Wettrick.)

of alder that had been cut off the line and thrown to one side, and that alder, of course, was in the process of decay; there was a small growth and little sprouts from the stumps over the alders that had begun to grow, but they were very short, and, in my opinion, one would have no difficulty in finding it.

The COURT.—What time are you referring to, Judge Winn?

Q. This is in 1910, and prior to August 1st, and prior to the time that you did the brushing out on the line in 1910 that I am speaking about?

A. Yes, sir. [959—809]

Q. Now, I will ask you if you have been down in the creek where the Alaska-Juneau Company has its present dam? A. I have.

Q. I wish you would explain the location of that dam with relation to the surrounding banks—are they precipitous, or is there quite a bed in the creek there,—give the Court some idea of how it is.

A. The creek at that place runs through a comparatively steep canyon; the walls of the canyon are quite steep and precipitous, in fact so steep that it is not possible to climb up along the side with comparative ease; one has to—one climbs up from the creek bottom to the top of the bank there with some difficulty; a portion of the bank where the side line of the Lotta crosses the creek is free from alder.

Q. Now, I will ask you how it would be if anyone was standing down where the dam is constructed, as to whether or not they could see along from that point this brushed-out trail or the lower side line, as

(Testimony of F. J. Wettrick.)

they have referred to it, of the Lotta claim?

A. From the creek bottom one can see the commencement of that line, but you cannot follow the line its entire length; you are down considerably lower when you are in the creek bottom than the slope of the surface ground there, and you cannot see for a great distance, but you can see the commencement of the brushed-out line.

Q. Now, I will ask you if these various locations that you have spoken of, and the position the dam has been in, first as it was prior to the trial when Judge Cushman decided the Basin case, and, secondly, as it is now, as to whether or not you made those locations by actual survey or by just going down and looking over it with your eyes? [960—810]

A. I did that by actual survey—careful survey and measurements.

Q. I will ask you in your opinion as to whether or not that dam could be located with any degree of certainty by simply going down and looking up over with your eyes and ascertaining whether or not it was above or below the lower side line of the Lotta claim?

(Not answered because of objection.)

Q. Mr. Wettrick, are you a Deputy United States Mineral Surveyor?

The COURT.—Judge Winn, the objection was not sustained on the ground that he is not qualified.

Q. I will ask you as a surveyor, and also from knowing where this brushed-out line along the lower

(Testimony of F. J. Wettrick.)

side line of the Lotta claim is, as to whether or not you or anyone else, as a surveyor, could with that data alone as to the brushing out as you knew it was there along the lower side line of the Lotta, could correctly locate the Alaska-Juneau dam by a simple inspection, without making a survey?

A. Yes, sir; it would be absolutely impossible to locate the position of the dam there with reference to the side line of the Lotta with any degree of care by mere inspection of the surrounding country there and the premises, for the reason that the creek runs through a comparatively narrow channel there, and the line crosses the creek at an angle, and to look or sight from the commencement of the line on the right-hand side and trying to run it up with the one on the left-hand side, it is not possible of any accuracy, because you might be off ten or fifteen feet unless you went up on top and then sighted across, in which case you can get it more accurate.

Q. I will ask you, Mr. Wettrick, if you know approximately, the ground that is claimed to be covered by the Oregon Lode Claim, as it was located in the year 1910? [961—811] A. I do.

Q. I will ask you to look at this map which I will have marked for identification Defendant's Exhibit "C-1," and ask you if you know what that map is a map of, and who made the original of it—this is a photographic copy of some sort of a map that they copied into the record in that case, No. 2155 of the Circuit Court of Appeals?

A. The original of that map was prepared by me

(Testimony of F. J. Wettrick.)

and under my direction.

Judge WINN.—I offer that map in evidence, if your Honor please.

(Whereupon said map was received in evidence and marked Defendant's Exhibit "C-1.")

Q. I will ask you if you have located upon this exhibit that you have just had the location of what the plaintiff company claims to be their Oregon location, as it was made in the year of 1910? A. I have.

Q. I wish you would tell to the Court there what the tracings are that indicate that, and what letters there are on it indicating it?

A. The claim is marked "Oregon Lode," and its boundary lines are indicated by broken lines, the end line of the Oregon lode being identical with the side line of the Colorado lode—the Colorado lode being shown here.

Q. I will ask you approximately, Mr. Wettrick, how much of the Oregon location as you have just indicated overlaps onto the Lotta patented claim?

A. It overlaps almost the entire width of the Lotta.

Q. And then the portion below that extended over onto what is known as the Parish No. 2 Lode Claim?

A. Yes, sir. [962—812]

Q. Now, you know where, with respect to the Lotta and the Parish No. 2 lode claims, the Canyon claim of the plaintiff company, as it was located, I think, in September, 1910, was?

A. I know the position that the Canyon lode claim occupied.

(Testimony of F. J. Wettrick.)

Q. Did the Canyon location as claimed by the plaintiff company overlap onto the Lotta patented claim?

(Admitted upon promise to be connected.)

A. The Canyon claim overlapped the Lotta claim almost entirely—that is, to almost the entire extent of the Lotta.

Q. Now, Mr. Wettrick, when you left the witness-stand the other day we had offered in several exhibits here showing some of the corner posts and end stakes as were found on the Lotta claim, I think, both in 1908 and in 1910—I wish you would, for the sake of singling out the corner stakes you found on the Lotta claim in the year of 1908, and those that you found in 1910, that you would make them on our exhibit “S” with red ink or red pencil?

A. Yes, I will place a circle in red around those corner posts. Do you want any more than those found on the Lotta side line?

Q. I want the one you said belonged to some other claim and was on the side line of the Lotta claim—have you put that on? A. I have.

Q. Now, I will hand you Defendant’s Exhibit “V,” which is a photograph, and to which your attention was called before, and I will ask you if the legend as shown on that corner post was there in 1910? A. It was.

Q. Is it plainly to be read there?

A. Very plain.

Q. What legend did you find on that corner post in the year of 1910? [963—813]

(Testimony of F. J. Wettrick.)

A. Found "6-S-87."

The COURT.—The year 1910—that would convey nothing to me about this case unless you confine it to the 1st of August.

Q. Did you see that stake there in the year of 1908? A. I don't remember that I did.

Q. When did you see it there in 1910?

A. Sometime during the latter part of September or October.

Q. Do you know when that stake was put in there, and who put it in?

A. I don't know of my own knowledge, no.

Q. You don't remember whether it was put there in 1910 or not, before August,

A. I don't know as to that, no; all I know is that I saw it there in place when I went up there during the fall of 1910 to tie it in with some other corner post to see how it lined up and tied in.

Q. You don't remember whether it was there in 1908, or not? A. No, I don't now.

Q. What corner is that, Mr. Wettrick, that has that legend on it, with reference to the Lotta claim?

A. This is corner No. 6 of the Lotta claim, marked 6 on the Defendant's Exhibit "S," being found above the Basin road leading to Perseverance and also above the flume line.

Q. And above the other stakes you have testified to being on the side line of the Lotta?

A. Yes, sir.

Q. I will hand you Defendant's Exhibit "X" in this case, and ask you whether or not the corner

(Testimony of F. J. Wettrick.)

stake or post—the end stake—the condition in which it is shown in this picture, if you know what legend was on this when you saw it in 1910?

A. Yes; sir; I do.

Q. Did you see that post in the year 1908? [964—814] A. I did.

Q. Which one of those stakes on the Lotta is it?

A. This is corner No. 5 of the Lotta, found near the cabin which has been referred to, and which is shown upon this picture as well as some others that have been introduced.

Q. Was there anything written or carved on that post in 1908? A. Yes, sir.

Q. Was it there in 1910? A. It was.

Q. How was the post with reference to its position both years you saw it?

A. In the same place exactly.

Q. And what did it have written on it?

A. It had "S-U. S. S. No. 87."

Q. What is survey No. 87?

A. That is the official survey of the Lotta.

Q. I will hand you Defendant's Exhibit "W" and ask you if you remember that corner stake or end post, or whatever it is?

A. Yes, I do; that is the same one we have just been referring to, corner No. 5 of the Lotta, being found near that cabin.

Q. Does this picture show the cabin?

A. This picture shows the door leading into the cabin, yes.

(Testimony of F. J. Wettrick.)

Q. You have already given the legend that was on it? A. Yes.

Q. Here is another one, Mr. Wettrick—Defendant's Exhibit "Y"—do you identify that as one of the corner posts or end lines of the Lotta claim?

A. Yes, sir.

Q. What one is that?

A. This is also corner number 5, showing a little more plainly the cabin near the corner.

The COURT.—Existing when? [965—815]

A. Existing in 1908—'10, and '13 and '14.

The COURT.—What part of 1910?

A. During the months of October and November, as I remember it, recall it now; that is the first time I had occasion to resurvey that line of the Lotta; I was there in the summer of 1908, and I saw it again in the latter part of the summer of 1910, somewhere around October or November.

Q. Where was it located with reference to the cabin, or when you found it in 1910, where was it with respect to where it was located in 1908?

A. Same place exactly.

Q. The cabin is still there, isn't it?

A. Yes, sir.

Q. Now, are there any other stakes on the end line or corner line that we haven't mentioned that you found on this claim in 1908 or 1910—on these photographs? A. Yes, sir.

Q. What are they?

A. Post No. 4, on the Lotta was in place, that being the southerly center end stake, and corner No.

(Testimony of F. J. Wettrick.)

3 of the same claim was in place also.

Q. Both in 1908 and 1910?

A. Yes, sir; as well as the witness corner and the corner No. 6 of the Lotta.

Q. What, if any, legend was written or carved on any of those stakes just mentioned?

A. They all had the survey number of the Lotta claim on—S-87.

Q. Both in the year of 1908 and 1910?

A. Yes, sir.

Q. How was the position in 1910 with relation to the position they were in 1908? [966—816]

A. They were in the same place.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wettrick, the line was brushed out by you in 1910, about September, wasn't it, that Lotta line?

A. I believe so—September or October, thereabout.

Q. All the lines of the Lotta were brushed out at that time, were they not?

A. No—at that time I brushed them all out, you mean?

Q. At that time all of the lines of the Lotta had been brushed out, or was the brushing out confined to just that one line?

A. No, in 1910 the brushing out consisted of the moving of the small brush on the end line of the Lotta between stakes 3 and 4, the southeasterly end line.

(Testimony of F. J. Wettrick.)

Q. Three and five?

A. Yes, 3, 4 and 5, and the southwesterly side line of the Lotta up to No. 6, and through 6 to 1 and 2.

Q. Those three lines were well brushed, you think, in 1910? A. By me or under my direction.

Q. Under your direction? A. Yes.

Q. And they were well brushed?

A. Fairly well, yes.

Q. When were you up there last, Mr. Wettrick?

A. Last Sunday.

Q. Those lines still show up there, do they?

A. Oh, yes.

Q. Show plainly?

A. Yes, very plainly. [967—817]

Q. The corner stakes that you have testified to have since been replaced by you, have they not?

A. No, the same corner posts were merely surrounded by concrete bases.

Q. You have done that with all the posts of the Lotta?

A. No, sir; not with all of them.

Q. Which post didn't you put in that way, Mr. Wettrick?

A. I didn't put No. 4 in that way nor No. 2.

Q. Those are not corners?

A. No. 2 is a corner, the one near Gold Creek right at the bank of Gold Creek.

Q. Nos. 1, 3, 5 and 6 you put in that way?

A. Not No. 1, that is a center end stake, and we didn't put that in that way.

(Testimony of F. J. Wettrick.)

Q. Which one, now, did you put in with a cement base?

A. No. 6, No. 5, and No. 3, I believe.

Q. Now, all those concrete piers were put right around the stakes, is that right?

A. The stakes were surrounded by a concrete base.

Q. That is the way they are now, is it?

A. That is the way No. 6 and No. 5 are, yes.

Q. How about No. 3?

A. No. 3 had fallen over, or wasn't standing up, so we had to reset that; I, myself, didn't go up to do this, but I had the concrete corner post surrounded by concrete; I gave the line with the transit, and set my corner No. 5, and my assistants put the concrete around the base.

Q. It was done under your direction?

A. Yes, sir.

Q. You saw it was done right?

A. I didn't go up to it—I assumed that my directions would be carried out correctly. [968—818]

Q. You don't know that that stake No. 3 is standing in the ground as it has always stood, and that the concrete stake is up on the hill further?

A. No, I don't know that.

Q. No. 3, I am talking about.

A. No. 3, that is the one over the hill.

Q. Right up on the hill, on the end line—you wouldn't swear No. 3 is right on the end line that was brushed out?

A. Certainly the end line that was brushed out several times.

(Testimony of F. J. Wettrick.)

Q. And yet, being over there at several different times, you and your men under your direction brought your post 15 feet from where the old post was?

A. Now, let me tell you what the situation is; the corner post No. 3 was put in there according to the patent notes, which calls for 300 feet from corner No. 5.

Q. You didn't follow the stakes on the ground when you put your No. 3 stake in there then?

A. I didn't go up to it; I didn't see it; I gave the directions to put in corner No. 3 of the Lotta.

Q. When you determined the line of the Lotta, you paid no attention to the stakes on the ground but disregarded them, and put your concrete piers 15 feet away from where the stakes on the ground are, isn't that right?

A. No,—when are you talking about?

Q. When you put your concrete piers in.

A. No, you haven't got the right idea about it at all.

Q. You said—how is it you got your concrete piers 15 feet away from where the post on the ground was?

A. The way corner No. 3 would set, the patent notes were run out and the directions were given to put it in according to the notes.

Q. You didn't do that when you set corner No. 5, did you? [969—819]

A. Corner No. 5 was right there—surrounded it.

Q. Corner No. 3 was right there, too, wasn't it?

A. I didn't see it, I didn't go up to it.

Q. Why didn't you go up to corner No. 3?

(Testimony of F. J. Wettrick.)

A. Because I didn't particularly care about walking up there at the time.

Q. Did you care about walking to corner No. 5?

A. I don't know whether I cared or not; that has nothing to do with it anyway.

Q. The distance between No. 5 and 6 isn't the same as the distance given in the patent, is it?

A. No, those were surrounded by concrete where they were.

Q. What is the difference between those—how many feet longer is that claim on the ground than as called for by the patent?

A. I think something like 26 feet.

Q. You didn't follow the patent when you put those stakes in, but put the stakes in according to the stakes in the ground, making the claim 26 feet longer than the claim as shown in the patent, is that right?

A. I just told that I surrounded those stakes with concrete.

Q. Why didn't you surround No. 3 with concrete?

A. I wasn't up there when that was done.

Q. Did you tell your men to put the concrete right at the stake?

A. I told them to surround the corner posts with concrete.

Q. You didn't tell them to go 300 feet up the hill and then put in a concrete post?

A. I don't remember that I did.

Q. What did you mean, Mr. Wettrick, when you said a moment ago that there was a difference be-

(Testimony of F. J. Wettrick.)

cause you followed the patent notes to set corner No. 3?

A. I mean that when they went up there to put up No. 3 they were to set it according to the notes.
[970—820]

Q. You know that the line was about 15 feet short in 1910, don't you? A. I do.

Q. And you know the stake was in the ground?

A. I do, most assuredly.

Q. You know that line was just a little over 285 feet?

A. Yes, that is taking those corner posts as they were on the ground; that corner post No. 3 was an old post, leaning somewhat, and rotted off; my assistants, I suppose, because it had fallen over, did not take that as being the corner and they relocated that corner from the patent notes.

Q. Now, what reason was there to assume that corner No. 5 was one of the right posts and corner No. 3 wasn't?

A. No assumption about it; I said I surrounded them with concrete; I would have a pretty good right to assume this according to the decision of Judge Cushman.

Q. You assumed, however, that that wasn't the right stake for corner No. 3 and moved the concrete stake further up?

A. No; I didn't; you are trying to get me to say something that is not true.

Q. You mean to state, Mr. Wettrick, that it isn't true that the concrete pier put in the ground at

(Testimony of F. J. Wettrick.)

corner No. 3 is approximately 15 feet above the stake, corner No. 3, as it set in 1910—do you mean to say that is not true?

A. I didn't say anything about it; it may be 15 feet or it may be a little less.

Q. Why did you not put that concrete on the stake as it stood on the ground, as you did in the other cases? A. I told you that I wasn't there.

Q. Then you don't know anything about it?

A. I know that I gave certain directions and I assumed that the [971—821] directions were carried out to the best of their ability. I know, however, that the concrete surrounds corner No. 5 and No. 6, being the side line of the Lotta claim, in identically the same position as it was in 1908 and 1910.

Q. Now, what were the directions that you gave your assistants about corner No. 3?

A. The exact directions I couldn't say exactly, except to surround the post No. 3 as they had done the others.

Q. You didn't tell them to go 300 feet up the line as called for in the patent, and there set the corner post? A. No, I don't think I did.

Q. What did you mean then when you said in response to my question a little while ago that that line was 15 feet short as the corner post is marked upon the ground, and that you had made that 300 feet as the patent calls for?

A. I mean that my assistants in carrying out the idea of concreting the corner posts probably in look-

(Testimony of F. J. Wettrick.)

ing over the ground or in finding that corner post, sought to relocate it from the patent notes.

Q. But your assistants relocated that corner from the patent notes? A. Yes.

Q. That was your testimony? A. Yes.

Q. It wasn't by your explicit directions that it was done? A. No.

Q. It was easy for your assistants to make such a mistake, was it?

A. It may be, I don't know about that; I wasn't there.

Q. Who were your assistants, Mr. Wettrick?

A. I think Mr. Wilhelm and one other person; I don't remember who carried the concrete; I don't remember.

Q. Mr. Wilhelm is also a surveyor, is he not?

A. Yes, sir. [972—822]

Q. He is associated with you, is he not?

A. Yes, sir.

Q. He was one of your assistants? A. Yes.

Q. Just a question—that corner at corner No. 6 is the Forrest corner, is it not?

A. Yes, and the Lotta also.

Q. It is marked for the Forrest, isn't it?

A. No; it is marked for the Etta.

Q. It isn't marked for the Lotta, is it?

A. It is marked for the Lotta, S-37.

Q. The witness corner, is that marked for the Lotta, too?

A. The witness corner—that is the one down at the road, you mean?

(Testimony of F. J. Wettrick.)

Q. That is a Forrest corner, isn't it?

A. That is on the end line of the Forrest also, as well as the side line of the Lotta.

Q. How was that marked?

A. That, if I remember, had the survey number of the Lotta on it and also the Forrest.

Q. Had the survey of the Lotta on it in 1910?

A. In addition to the Forrest number; I am reasonably sure of that; I didn't look that up in my notes, because it is a witness corner.

Q. You know how that corner No. 3 looked on the ground?

A. I know how it looked in 1910.

Q. I am handing you a photograph marked for identification Plaintiff's Exhibit No. 35, and ask you if that is the corner that you saw in the ground?

A. That is pretty hard to tell.

Q. Does it look like it?

A. No, not exactly. [973—823]

Q. Now, the question, Mr. Wettrick, I am asking you—is that a good, correct picture of corner No. 3 on the ground?

A. Oh, I don't know; it may be; I never looked at it from that angle, maybe, but I wouldn't say because I wasn't up there when the picture was taken.

Q. You are not able to tell anything about a photograph unless you see it taken?

A. I can recognize a great many photographs.

Q. I now hand you photograph, Plaintiff's Exhibit No. 36, for identification, of corner No. 3 as established in concrete on the ground.

(Testimony of F. J. Wettrick.)

A. It isn't an excellent picture—not a very good one; it shows that corner all right.

Q. That is corner No. 3 as it is on the ground, isn't it?

A. I don't know whether that is corner No. 3 or not; I don't see any marks on it; it has a concrete base all right.

Q. It has the appearance of corner No. 3, hasn't it?

A. Yes, it looks like it; it has one of those square timbers used for corner posts.

Q. You would take that for corner No. 3 if you were to see it in the dark, wouldn't you, Mr. Wettrick?

A. I don't know whether I would or not; I would satisfy myself that it was corner No. 3; I am sure I wouldn't walk away from it and say I couldn't find it, or anything of that kind.

A. All right, now, I hand you another photograph for identification, Plaintiff's Exhibit No. 37, and ask you if that doesn't show corner No. 3 as set in concrete, and also corner No. 3 as set in the ground 15 feet away from that?

A. I don't know; I haven't been up there recently.

Q. You don't know? A. No.

Q. Now 5 was a painted post, wasn't it? [974—
824] A. No. 5?

Q. Yes, in 1910.

A. Oh, it had a little white paint on it, I think.

Q. And the legend on it was painted in black, was it not?

(Testimony of F. J. Wettrick.)

A. The legend was in black, whatever legend there was.

Q. And No. 6 was a different kind of a post, and was scribed, was it not?

A. No. 6 was exactly the same kind of a post.

Q. Wasn't it older?

A. The same timbers exactly.

Q. As to age? A. Same thing exactly.

Q. It was scribed, was it not?

A. It was scribed; and the same kind of a post, but what appeared to be, and was taken, as the patent stake was alongside of this patent stake that you find at corner No. 6, a five by five.

Q. Was that scribed?

A. The stake alongside, that looked to be the patent stake, had on it S. No. 85.

Q. Now, there was no old stake at corner No. 6, was there?

A. There was no old stake at corner No. 6.

Q. The stakes then were different—that is to say, there was a new stake there at corner No. 5?

A. Yes.

Q. And a new stake at corner No. 6? A. Yes.

Q. They were both scribed?

A. No. 6 was scribed.

Q. And not painted?

A. Yes, it may have been painted white.

Q. The legend wasn't painted? [975—825]

A. No, the legend wasn't painted.

Q. And the new stake at corner No. 5 and the old

(Testimony of F. J. Wettrick.)

stake at corner No. 5 were different kinds of stakes, weren't they? A. Yes, they were.

Q. The one at corner No. 5 is a new stake tied to the old stake?

A. The old stake was attached on to the five by five to preserve the legend and keep it; the old stake having rotted away a little.

Mr. HELLENTHAL.—That is all.

Judge WINN.—That is all.

The COURT.—I didn't quite understand your exhibit—now, you have delineated on there the Lotta lode claim; is that the Lotta lode according to the stakes on the ground or according to the patent?

A. That is the Lotta lode according to the stakes on the ground.

The COURT.—When did you make that plat?

A. I made that plat about two weeks ago from notes and surveys which I made in 1908 and 1910, together with some—

The COURT.—You know that Judge Cushman in the decree of this court has said just what the Lotta lode claim is, in that old suit of the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company?

A. Just what the Lotta is? I don't know that he said distinctly—I read his decision at the time, but the position of the lower side line of the Lotta, was, in my opinion, at that time defined as being where the stakes were upon the ground and are now.

The COURT.—Let's see if I can refresh your

(Testimony of F. J. Wettrick.)

memory—Judge Cushman held that “It is ordered, adjudged, considered and decreed that the plaintiff have and recover of and from the defendant the possession of that certain lode mining claim known as the Lotta Mining Claim, United States Survey No. 87, and that the [976—826] defendant be ejected from the possession of said mining claim, or so much of the same as it is in possession of, which said lode mining claim is particularly described as staked upon the ground and more particularly as follows, to wit:” Then it goes along and gives the courses and distances; he has decided in there that the Ebner Gold Mining Company owned that property, and that that is the Lotta Lode Claim; now, have you ever surveyed that according to Judge Cushman’s decision?

A. I don’t know just now, from the courses and distances he gave.

Q. Can you tell me whether or not that plat which has been introduced, called the Lotta Lode Claim, is the Lotta Lode Claim as Judge Cushman has set it forth in this decision?

A. It is if he follows the courses and distances—

The COURT.—There are the field-notes; tell me whether that is the Lotta claim as Judge Cushman has decided it. What I would like for you to do for the information of the Court is to take the field-notes—the courses and distances as given by Judge Cushman, and tell me how it compares with the plat that has been introduced in evidence, Defendant’s Exhibit “S.”

(Testimony of F. J. Wettrick.)

A. For that purpose I will have to read over the description and compare it.

The COURT.—What I would like for you to do, Mr. Wettrick; if the field-notes as set forth by Judge Cushman do not plat out the same as the Lotta lode plats out on exhibit “S,” I wish you would fix it so I can superimpose the plat made according to Judge Cushman’s notes—so I can superimpose that on the plat made by you—on exhibit “S.”

A. I can either plat it on exhibit “S” or put it on another plat.

The COURT.—Put it on another plat; make it to the same scale so that I can see where the difference, if any, is.

(WITNESS EXCUSED.) [977—827]

The defendant, to further maintain the issues on its part, introduced as a witness WILLIAM M. EBNER, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of William M. Ebner, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Your name is William M. Ebner?

A. Yes, sir.

Q. You now reside in California, do you, Mr. Ebner? A. Yes, sir.

Q. Did you ever reside in Alaska? A. I did.

Q. When did you first come to Alaska?

(Testimony of William M. Ebner.)

A. In 1890.

Q. What was your business, Mr. Ebner, when you were in Alaska? A. Mining.

Q. How long did you stay here?

A. Until 1909.

Q. Just briefly state to the Court what experience you had during this period of time, in mining in Alaska, and by this I don't mean for you to go into detail too much, but as to where and at what points in Alaska you did any mining?

A. In 1891 I had charge of what is now called the Perseverance mine; and I am not sure, 1901, '02 and '03; in 1904 I did some mining on what is called Dora group; in 1905 I leased and operated what was afterwards called the Ebner mine, and from that time on up to 1907 I operated the Ebner mine.

Q. Now, this mining that you did on what is called the Perseverance [978—828] property, where is that property with reference to the property of the Ebner Gold Mining Company?

A. It is in a southeasterly direction, probably on a straight line two miles distant from the Ebner property, southeast; there is the Ebner property (indicating), the Ebner Company and then comes the Perseverance.

Q. The Perseverance property is still further up Gold Creek? A. Up at the head of Gold Creek.

Q. In Silver Bow Basin? A. Yes.

Q. All of this property that you have just mentioned is in what is known as the Juneau Gold Belt, is it? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. You say you mined at the Perseverance for how many years? A. Three years.

Q. Did you have a stamp-mill up there?

A. Yes, sir.

Q. What capacity, Mr. Ebner?

A. Ten-stamp mill.

Q. Where was that stamp-mill that you ran with reference to the 100-stamp mill that the Perseverance Company afterward built?

A. It was in the creek, or on the flat across the creek, probably 100 or 150 feet from where the 100-stamp mill was built.

Q. The one that they built was on the right bank of the creek as you went up the creek, a little bit?

A. Yes, sir.

Q. And yours was down the creek?

A. Down the creek on the left-hand side.

Q. Did you mine or take ore from any of the claims that went to make up the Perseverance group?

A. Yes, sir.

Q. And now owned by the Alaska-Gastineau Company? [979—829]. A. Yes, sir.

Q. Now, you said you did some mining on the Dora group—where is the Dora group with reference to the Ebner property?

A. The Dora group adjoins the Ebner on the northwest.

Q. That is the same group that is marked on the Defendant's "S" here "The Dora Group," is it?

A. Yes.

Q. I will ask you, Mr. Ebner, just to step over and

(Testimony of William M. Ebner.)

look at this map and acquaint yourself with it so I can ask you some questions. Now, what year did you say you commenced mining the Ebner Gold Mining Company's property? A. In 1895.

Q. You are the same Ebner that that property is named for, the Ebner Gold Mining Company, are you not, Mr. Ebner? A. Yes.

Q. What kind of a stamp-mill did you have on there when you first commenced?

A. A 10-stamp mill.

Q. Will you look at Defendant's Exhibit "S" and see if you recognize the location that that stamp-mill was in when you first commenced operating on this property?

A. This in black marked "Ebner Mill" represents the mill.

Q. That was first a 10-stamp mill, you say?

A. Yes, sir.

Q. Did you afterwards increase the number of stamps? A. Yes, I added five stamps.

Q. When did you add those five stamps?

A. I think in 1902.

Q. Just explain to the Court, Mr. Ebner, in a general way what, in the way of buildings, air-compressors, and so forth, were on this property when you first went into possession of it to work it?
[980—830]

A. Well, in all there was a 10-stamp mill, and a building, a boarding-house and the blacksmith-shop—an old blacksmith-shop, and then a blacksmith-

(Testimony of William M. Ebner.)

shop at the mine, and the tram connecting the mine with the mill.

Q. What improvements, if any, did you afterwards put upon it during your working of this mine, in the way of buildings?

A. After I built an addition to the boarding-house, I built two new blacksmith-shops, and a boiler building and a building down in the canyon at the creek for the compressor and the stamp-mill.

Q. You never did do anything with that plant down in the gulley there for the stamp-mill, did you, except that you did at one time intend to put stamps in it?

A. No, sir; all I had in there was an electric light plant and a compressor plant; that was all the machinery that was put there.

Q. Now, Mr. Ebner, over how many years did you operate this 10 and 15-stamp mill?

A. From 1895 to and including the season of 1907—that would be about 12 years.

Q. From where did you get your ore that you put through this mill during that time?

A. Most of it from what we call vein No. 2.

Q. Do you know whether or not those workings and the vein are indicated on this map, Mr. Ebner—now, look at it and see.

A. Yes, the workings are indicated.

Q. By the little dotted lines? A. Yes, sir.

Q. One called “Lower Tunnel”? A. Yes, sir.

Q. And another called “Upper Tunnel”?

A. Yes.

(Testimony of William M. Ebner.)

Q. And "Upper Line of Open Cut"? [981—831] A. Originally there were open cuts.

Q. The workings, then, that are indicated on this map shown on the Crown Point claim and Keystone lode claim are some of the old workings, are they?

A. All that which is indicated on this map by the old workings. Most of my workings were confined to what we called "Lead No. 2." In 1894 I milled something like 650 tons from what we called "Lead No. 1."

Q. That is marked down there "1888—Tunnel"?

A. Yes; that is where you see the tunnel there; there is a glory-hole around that, close to that tunnel; it is about 650 feet from there to the lower tunnel out to the mill.

Q. What was your purpose in going down there?

A. That was for the purpose of ascertaining the values.

Q. Now, can you tell to the Court approximately about how much underground work—tunneling and open cuts—that show upon the ground up there that were made while you were working this property?

A. In tunnels and cross-cuts, raises and shafts, there were approximately 2700 feet altogether.

Q. Do you know approximately how many tons of ore you put through those mills? A. Yes, sir.

Q. How much?

A. Including the season of 1895 to the time that I closed down in 1907 there was approximately 140,000 tons.

(Testimony of William M. Ebner.)

Q. Do you know about the general average value of that ore body that you put through the mill?

A. I know what the average for the total—that is the net results, the net recovery.

Q. What was it?

A. Three dollars and thirty-five cents per ton.
[982—832]

Q. Now, where did you get your water, Mr. Ebner, for milling this ore?

A. From Gold Creek, at a point near the Ebner dam.

Q. About how far above your old stamp-mill?

A. Nine hundred and fifty feet approximately, I think—about that.

Q. Do you know where the new high-line flume has been built upon that property?

A. I know about where.

Q. Where is the intake of that flume with respect to that old dam?

A. I think it is right at the old dam; in fact, I know it is right at the old dam; the intake is on the north side of the creek.

Q. Now, Mr. Ebner, I will ask you if you have been out and over this property since you came up here on this trip?

A. I have been up there; been through the lower workings; the tunnel that is now there, the tunnel that has been driven, and the operations that are being carried on, and cross-cuts at the present time.

Q. Now, since you have left here, Mr. Ebner, who has been carrying on the work on this property for you?

(Testimony of William M. Ebner.)

A. Why, when I was here last Mr. Mackey was driving this tunnel, and I understood it was under the direction of Mr. Underwood, or the California-Nevada Copper Company.

Q. You know Mr. Bent, don't you? A. Yes.

Q. You know when Bent and his party were here in 1910? A. I wasn't here at that time.

Q. Did you sell out your interest in this property before this new work was commenced on it, or did you still hold an interest?

A. I sold out; I sold out the property in 1908.

Q. Who were the people back east that you had your dealings with? A. F. L. Underwood. [983—833]

The COURT.—When did you say you sold out?

A. In 1908—March, 1908.

Q. You remember when Mr. Tripp went into the possession of this property to work on it, don't you?

A. I knew about it soon after I sold out, who was in possession.

Q. You know who Mr. Tripp was working under—under whose directions he was working?

A. Yes, sir.

Q. Whose?

A. Under the direction of Mr. Bent and Mr. Underwood.

Q. Mr. Underwood is the man you say you had the contract for the sale of your property with?

A. Yes, sir.

Q. You were up here in 1910? A. Yes, sir.

Q. What part of 1910?

(Testimony of William M. Ebner.)

A. I think in the latter part of November and December.

Q. Now, just explain to the Court in a general way what work there was in the way of tunnel work—tunneling, cross-cutting and upraising—that you have observed done upon this property between the time you quit work, when you turned it over to Underwood or his people, and the time you visited it last.

A. There was this long tunnel—I haven't measured it, but they told me that it is 3,500 feet long.

The COURT.—You say you sold out to Underwood? A. Yes, sir.

The COURT.—Do you mean you sold your stock in the Ebner Gold Mining Company, or that you sold the property itself?

A. Sold the stock—in other words—

The COURT.—Was the title to the property in the Ebner Gold Mining Company, or was it in you individually?

A. The Ebner Gold Mining Company. [984—834].

The COURT.—And you sold a majority of the stock to Mr. Underwood?

A. Yes. You see we sold out; that is when I received the first payment. But the papers were closed in March.

Q. You have never operated the property since that time, Mr. Ebner? A. No, sir.

Q. Now, you say that since you quit operating the property you have visited the property and know

(Testimony of William M. Ebner.)

approximately what work has been done upon the property since you turned over your stock or had your agreement to turn over your stock to Mr. Underwood? A. Yes, sir.

Q. And you have examined it within the last few days, haven't you, Mr. Ebner? A. Yes, sir.

Q. You went up there for that purpose?

A. I did.

Q. Who was with you most of the time while you were on the property?

A. The first time there was Mr. Noble, and Mr. Anderson and Mr. Muir; the last time it was Mr. Muir and myself.

Q. Mr. Muir has been with you each time you were up there making these examinations?

A. Yes, sir.

Q. Now, you spoke a while ago, since you had turned over your stock to Mr. Underwood that a long tunnel had been run which you said you had been given to understand was approximately 3500 feet long—I will ask you to look at Defendant's Exhibit "S" and state if the tunnel marked "New Tunnel" on there is the tunnel you have reference to?

A. That is the tunnel I have reference to. [985—835]

Q. Now, besides that tunnel have you seen any other underground work that has been done there since you turned your stock over? A. Yes, sir.

Q. Just describe in a rough way to the Court what it is.

A. I don't know just what distance in, but I

(Testimony of William M. Ebner.)

should say something like 3,200 feet—something like that—where those surveys are marked on that, not at that point but somewhat beyond.

Q. You mean beyond the word “Crown Point”?

A. What I mean, these workings, the old workings, has a well-defined solid slate, gray slate—footwall; probably the best defined footwall there is in any part of this country; it is well defined, and that same footwall shows in the lower workings; and in this new tunnel each way from that footwall, are other tunnels or drifts for about a distance of about 700 feet in each direction; quite a number of cross-cuts away from the footwall in different directions, some following in at right angles and some of them at other angles, and developing what you might call the same body of ore that shows on the surface. In other words, in some places here the ore body shows 100 feet wide or more, and going along where some of the cross-cuts have been driven in far enough it is probably 40 feet or 60 feet, but everywhere that entire 1400 feet—going 700 feet in each direction—it is approximately—that—there are numerous cross-cuts, and they all show the same character of ore that is found up in the workings—practically the same characteristics, the same mineral and the same kind of mineral.

Q. Do you know at approximately what depth this new tunnel is below your old workings? [986—836]

A. I know approximately, because I had that surveyed years ago, and at that time I knew just what the distances, the vertical distances was—about 440

(Testimony of William M. Ebner.)

feet according to my old measurement, but just what these distances are I don't know only what Mr. Muir has told me.

Q. Now, I will ask you, Mr. Ebner, if you ever had occasion to have anyone examine with you, and if you also examined, the amount of ore that has been developed by reason of your working in the old workings, leaving out any account of what ore body you found in this new tunnel?

A. Yes; in 1906, Professor Crosby made a very lengthy examination of the Ebner mine, and also the properties of what is called the Dora Group—the Dora properties, and some other properties, and he gave me figures as to the amount of ore he said was developed on the Ebner property.

Q. Did you go over that with him?

A. He told me there were twelve million tons developed on the Ebner property; I asked him how he got at that measurement and he explained it to me—went over it, went through the tunnels, and more-over than that we had accurate maps at that time—of all of the workings—and he explained to me how he arrived at that measurement.

Q. Well, as a mining man what do you think of it—was it a fairly good estimate of what there was there or not?

A. A fairly conservative estimate, I think, the way those things are usually estimated.

Q. Now, Mr. Ebner, the new tunnel that you have described, and the other drifting or cross-cutting that you have testified concerning, and what you saw

(Testimony of William M. Ebner.)

in there—I will ask you in your judgment as a mining man how much ore has been developed there, taking into consideration the old workings and these new workings you have testified concerning? [987—837]

A. Well, a conservative estimate, I would say that these lower workings have at the least calculation more than double the original of 12 million tons.

Q. Now, aside from this underground work, Mr. Ebner, there has been a high-line flume built from the old Ebner dam around to the Cape Horn property—Cape Horn claim—that has been constructed since you turned over your stock to Mr. Underwood, has it not? A. Yes, sir.

Q. You had nothing to do with the building of that flume line? A. No, sir.

Q. Do you know or remember approximately, Mr. Ebner, how many mining claims, and the number of them, there were that constituted the Ebner Group at the time you first took charge of that property and mined it?

A. Why, about the same as now, I think; there was eight or nine.

Q. There has been some new locations made since, hasn't there?

A. Yes, been some new locations made.

Q. Could you look on this map and point out to the Court approximately what the claims were that constituted the Ebner group when you first went into possession of it?

A. The Lotta Claim, the Taku lode, the Keystone,

(Testimony of William M. Ebner.)

the Golden Fleece, the Grand Review, and the Jewel and the Crown Point.

Q. What other locations were made by you for the Ebner Company since that time?

A. I located—that is they were located in my name originally, the Parish No. 1 and 2, and the Cape Horn.

The COURT.—What did you say about the Parish Lode Claim?

A. The Parish No. 1 and 2 and the Cape Horn and the Eureka.

Q. Did you name them all?

A. Yes, sir. [988—838]

Q. Did you name the Eureka? A. Yes, sir.

Q. You didn't locate the Auk Chief?

A. No, sir.

Q. The Taku Queen Lode Claim, did you locate that?

A. No, sir; I located nothing outside of that except some mill sites adjoining the Cape Horn Lode, the original Cape Horn Lode; a portion of that is now the Cape Horn No. 2.

Q. There is a fractional placer claim up here somewhere, Mr. Ebner (indicating)?

A. Yes, a fractional placer claim.

Q. Where is that fractional placer with reference to the Ebner dam?

A. Some of it is right close to the Ebner dam; it is this fraction in here between the Humboldt—the end of the Golden Fleece and the end of the Humboldt—that little fraction in here.

(Testimony of William M. Ebner.)

Q. Now, I will ask you, Mr. Ebner, what official position you were occupying with the Ebner Gold Mining Company at the time you made these several locations? A. I was the president.

Q. And you were also manager, were you not?

A. Yes, sir.

Q. Running the mines up there? A. Yes, sir.

Q. I will ask you if these locations were made by you individually or made for the Ebner Gold Mining Company?

A. They were all made with a view of being turned in to the Ebner Gold Mining Company.

Q. And they have all been turned in?

(Not answered because of objection.) [989—839].

Q. What was the reason of your locating these claims for the company—did you make discoveries on them? A. I made discoveries.

Q. This, Mr. Ebner, is Book No. 5 of Placers, part of the records of the Recorder of Juneau Recording District—I call your attention to Page 147, which purports to be a location notice of the Cape Horn mill site—I will ask you if you are one of the parties that made that location? A. Yes, sir.

Q. You know Mr. Lovett, whose name is also signed to this mill site notice? A. Yes, sir.

Judge WINN.—We now offer in evidence, if your Honor please, page 147 of Book No. 5 of Placers—and we will substitute a certified copy for the location notice that is recorded on that page.

(Whereupon said location notice was received in evidence and marked Defendant's Exhibit "D-1.")

(Testimony of William M. Ebner.)

Q. Now, Mr. Ebner, I will ask you for what purpose was that mill site located?

A. At the time I located that for myself, but with the intent—my principal purpose was to use it in the near future for the Ebner Gold Mining Company.

Q. As a mill site? A. As a mill site; yes, sir.

Q. Where was that location with reference to the Cape Horn No. 2 Lode Claim, as indicated in Defendant's Exhibit "S"?

A. It covered all, I think, of Cape Horn Lode Claim No. 2—not all of it, but it covers all of this portion (indicating).

Q. That is all— [990—840]

A. All of that which adjoins the Cape Horn on the southwest side line and tying it on to these placer stakes as they existed at that time.

Q. When did you change or make any location of this particular piece of property known as the Cape Horn No. 2?

A. In 1908 I had the Cape Horn officially surveyed, the same as I would have it surveyed for patent; I found then that on this side line there were some quartz croppings that looked very good, and that there would be sufficient quartz in sight to make a quartz location, so I located the Cape Horn No. 2 over the original mill site.

Q. Now, Mr. Ebner, you stated that you took that originally as a mill site; what else did you have in mind at that time as to the working of the Ebner property—that is, did you expect to continue work-

(Testimony of William M. Ebner.)

ing it at the old mill or did you make this mill site location out in contemplation of opening up the property on another plan?

A. Well, you want all of my plans, Judge, from the beginning?

Q. You might go over it, Mr. Ebner, slightly; you said you built the old air-compressor, at one time expecting to put 30 or 40 stamps in it; just explain the situation, what you were expecting to do with that building and then what you expected to do down about Cape Horn?

A. That was in 1897, I believe, the building where the air-compressor was built, and I expected to put in 40 stamps; that air-compressor was placed there for the purpose of getting power at the old place; I couldn't get power enough—only had 110-foot head—and couldn't operate the compressor or the 15-stamp mill, or even the 10-stamp mill when the water got a little bit low; so my plan was to have my compressor plant,—in the meantime to install 40 stamps, and once I had my 40 stamps installed I would bring my pipe-line over to Shady Bend and start [991—841] a working tunnel on practically the same line as that is there now.

Q. There is a letter on file in this case, Mr. Ebner, that you wrote to Mr. Tripp; you have seen that letter, I showed it to you? A. Yes, sir.

Q. The one that Mr. Tripp wrote to you?

A. Yes, sir.

Q. You are the same Ebner mentioned in that letter? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. What, if anything, else, did you do, Mr. Ebner, with this plan in view of opening up and developing this property before you turned over the workings—did you do anything else except make these locations of mill sites and so forth—did you ever commence any tunnel there at Cape Horn?

A. I had the survey made.

Q. When did you have that survey made?

A. I think that was in 1906.

Q. Do you remember who made it?

A. I think that Lloyd Hill made it for me; I had a survey made along the line—it may not be precisely on the line of that tunnel, but the opening was at the same spot; and also had a survey made from that to the beach—several surveys.

Q. Down to the beach near Juneau?

A. Yes, sir.

Q. Did you do anything else in pursuance of that plan that you remember of, or is that about all?

A. That is about all that I did in 1906.

Q. What was the reason you didn't carry out this plan, Mr. Ebner?

A. The chief reason was we didn't have money enough—short of funds. [992—842]

Q. Well, did you have amongst your plans there the building of a mill down near the mouth where you had this tunnel surveyed? A. Yes.

Q. And what further plan with respect to having the water brought to that point had you in mind at that time?

A. My plan of bringing the water there was to

(Testimony of William M. Ebner.)

drive this tunnel and then bring in the water from the dam to this underground tunnel and the raise, and to bring the pipe in and run it through the tunnel and keep it away from the cold and the snow—that was my plan.

Q. And to take it from Gold Creek at what place?

A. At the Ebner dam.

Q. The old Ebner dam? A. Yes, sir.

Q. Just where the water is taken from by the new flume line that has been built—the same dam?

A. The same dam.

Q. Now, I will ask you, Mr. Ebner, what, if anything, do you know about the side lines or any of the lines of the Lotta Lode Claim having been brushed out by yourself or under your instructions while you had charge of this property?

A. I had the side line of the Lotta Lode Claim brushed out in 1893, before I had anything to do with the property, but did at that time locate and own a good portion of what is called the Dora Group.

Q. What was your object at that time in brushing it out?

A. I wanted to get in touch with the side line for the purpose of tying on the Etta and Forrest Lode claims.

Q. That is the Etta and Forrest lodes that are shown on this exhibit "S" of the defendant?

A. Yes, sir. [993—843]

Q. Did you find any corner posts or monuments along on the side line or the end line of the Lotta claim in 1893 when you had this brushing out done?

(Testimony of William M. Ebner.)

A. Yes, sir.

Q. Had you seen any of the corner posts or monuments that mark the boundaries of the Lotta Lode Claim prior to 1893?

A. I have seen them, I think, the year before in 1892, when I first purchased a portion of what is now the Dora group.

Q. Who was with you when you saw them, do you remember?

A. A man by the name of Sagemiller.

Q. In 1892, referring to this map, Defendant's Exhibit "S," I wish you would state to the Court just what monuments, as well as you remember, you found on the Lotta Lode Claim, and if any of them are these monuments?

A. I found the southwest corner, corner No. 5, up among the trees; No. 6 we found, and we found several of these (indicating); we just found two or three of those; Mr. Sagemiller was very familiar and he knew all about them.

Q. That is, No. 6 and No. 5 as shown on Defendant's Exhibit "S"? A. Yes, sir.

Q. Do you remember what was carved on there—what legend was scribed on or put on in some way in 1892?

A. I don't remember exactly, but I know the survey No. was 87, the Lotta; I don't remember all of it; I know it belongs to the Lotta claim; there wasn't any carving on them; they were two by twos, or three by three, something like that—they were painted.

(Testimony of William M. Ebner.)

Q. You didn't have anything to do with the surveying of that claim for patent?

A. No, nothing; that was patented before I came here.

Q. Now, did you see any of those corner posts of the Lotta in 1893? [994—844]

A. Yes, the same posts.

Q. When do you remember of seeing them next?

A. I saw them next soon after I came into possession of the Ebner property, about 1896-1895, and I had them brushed out occasionally and kept in touch with the corners; the initial posts No. 5 and those going up the hill.

Q. Those going up the hill?

A. Yes, sir.

Q. Along in the neighborhood of 3 and 4, through there right up the hill?

A. Right about there where you get it high there.

Q. You mean the Taku lode? A. Yes.

Q. And from there right on up on the end line of the Keystone and Crown Point?

A. Yes, sir; this one was standing (indicating).

Q. That is the one that is down at the fractional lode claim?

A. That one there and this one here (indicating), and that one there; this is up in the gulch there; I always knew the location of that one, and that one and this one here; and this one here and this one set over here close to the Webster mill site.

Q. The one referred to as the Webster in the

(Testimony of William M. Ebner.)

corner, that is on the end line of the Taku lode and is one of the corner posts of the Webster mill site?

A. Yes; it is set at the intersection; there are two road posts there.

Q. Around the claim—

A. Yes, the original mill site here was located afterwards—that post was in place; that is up above the road about 150 feet.

Q. These other posts that you were pointing out were corner posts of the Grand Review, Jewel lode, and then down on the Webster [995—845] mill site, and on the line of the Taku lode claim—south-western line of the Taku lode claim—those are some of the posts you were pointing out? A. Yes, sir.

Q. When do you remember seeing those posts along there, Mr. Ebner?

A. Those that were outside the Lotta I don't know just when—just what years, but I think it was about the same year, about 1896; after I had possession of the property, the Ebner Gold Mining Company, owned it, I had most all of the lines brushed out for the purpose of finding the posts and preserving them.

Q. Now, do you remember seeing any of those corners which you have just mentioned at any time later—do you have any remembrance of it?

A. Yes, I saw them later—I don't know just how late.

Q. Let's get down to the Lotta—we left off seeing some of those corner posts in 1899, I believe you said.

(Testimony of William M. Ebner.)

A. I saw, or I remember the corner post No. 5 of the Lotta here and another one up here; another one up here near the Royal, and when I located the Parish that was my guide; I came out here in locating the Parish 125 feet and put in this end.

Q. That is the lower end line of the Lotta?

A. Yes, sir; I had that brushed down to the creek, and a portion of it on this side.

Q. Post No. 6?

A. Yes, Post No. 6 was in a clump of trees, but when the brush was away you could see it from corner No. 5.

Q. You could look across from No. 5 and see corner No. 6? A. Yes, sir.

Q. I will ask you if you were on that property in 1908, Mr. Ebner, and went over this side line of the Lotta claim? A. Yes, sir. [996—846]

Q. There has been some testimony, I believe, by Mr. Tripp and Oscar Harri about brushing out that was done on the lower side line of the Lotta in 1908—were you with those parties? A. Yes.

Q. Just state what you did about brushing out the lower side line of the Lotta claim at that time?

A. In 1908 I got Mr. Wettrick and Mr. Hill and we surveyed these Parish claims here, and also the Cape Horn and the Eureka claims; and we brushed out the lower side line of the Lotta; it was all brushed out and it was brushed out good and wide, well cut out down close to the ground all the way on the lower side line of the Lotta as shown on exhibit "S."

(Testimony of William M. Ebner.)

Q. What stakes or corners do you remember having seen there in 1908 either on the side or end line or anywhere on the Lotta claim?

A. I saw this post No. 5, and this center post here, 4; and this one, 6; and this post, I don't know what number that is; that is on the lower side line of the Lotta and the end line of the Forrest.

Q. That is just below corner post No. 6 on this Defendant's Exhibit "S"?

A. Yes, sir; right alongside of the road.

Q. Now, when, if at any time, Mr. Ebner, were any of the old posts reset or new posts put in the place of any of these along the lower side line of the Lotta claim?

A. Post No. 5, the original post was in place, and, I think, in 1908 we put a large stake alongside of it and nailed the original post that was put there when it was surveyed for patent, or which was there in 1892 or '3 when I saw it first—nailed that on to the large stake; and post No. 6 was a small post in 1908, and just the same kind of a post that I saw there in 1892 and '3. [997—847]

Q. Now, to identify these posts again, I hand you Defendant's Exhibit "D" and ask you to look at that and see if you identify that as being a photograph of any one of these posts; and if so, state in your judgment which one?

A. This is what I call post No. 6, and the way I identify that is by those trees there; it is probably 150 feet above the road just as you cut through the dam there.

(Testimony of William M. Ebner.)

Q. Did you ever notice any blazing on any trees, Mr. Ebner.

A. Yes, I noticed the blazing the first time I saw the post; they are very easy to see.

Q. Where, with respect to this corner post No. 6, was the blazing?

A. Right close; I think—I wouldn't be sure just what trees, but they are very distinctly visible; there was blazing there that had some connection with this post and some marks, but I don't just remember what the marks were on the blazing.

Q. Now, I will hand you Defendant's Exhibit "Y," which appears to be a photograph of the post there, and ask you if that looks familiar to you?

A. Yes, this is post No. 5.

Q. Does that look anything like the post you saw there in 1908?

A. It is the same, yes; the side post doesn't show, that is nailed on to this; there is the rock—it looks just the same.

Q. Where is that post with reference to the cabin that is on the right-hand side of the creek?

A. Southeasterly direction from the cabin, not far from the cabin.

Q. What claim is the cabin on?

A. The cabin is on the Lotta claim.

Q. I will ask you to look at Defendant's Exhibit "S" and state if this place is properly located as the cabin? A. About there. [998—848]

Q. The post you are testifying concerning now is over next to the cabin? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. No. 5. Here is another one, Mr. Ebner, Defendant's Exhibit "X"?

A. That is the same post only showing the line going up the hill, showing the end lines of the Lotta and the Taku Lode Claim.

Q. Do you remember of having seen that post there in 1908?

A. Yes, sir; the large post was put there in 1908, if my recollection is right; the small post is right alongside of it; that was really a Parish post put in there for that purpose, and the other one nailed to it; the other one is standing there and rotted off.

Q. Is it a Parish or Lotta post?

A. Both, I think, but the larger post was put there, I think, in 1908, right alongside of the original post and then the original post nailed onto it.

Q. Here is Defendant's Exhibit "W"—do you recognize that as a post being anywhere on the Lotta boundary lines in 1908?

A. Yes, sir; that is the same post.

Q. And did I understand you to say something about a stake being a Parish stake?

(Not answered because of objection.)

Q. Now, I will ask you, Mr. Ebner, as to whether or not there were any stakes along on the Parish No. 2 lode claim in 1908 when you were down there?

A. Yes, sir.

Q. Do you remember what stakes they were?

A. The southeast corner stake, this stake (indicating)—that is following the lower side line of the Lotta on the lower side line of the Royal 125 feet;

(Testimony of William M. Ebner.)

that stake was there. [999—849]

Q. The stake that is put 125 feet along the continuation of the Lotta lode claim and is marked No. 3?

A. I don't know what it is marked.

Q. Marked with the figure three?

A. That was an alder stake; and this stake was there, No. 4, down towards the creek here.

Q. Do you remember of ever seeing any other stake, along the upper side line of the Parish in 1908?

A. This stake (indicating) I don't remember that stake was there; this stake was there (indicating).

Q. That is, the southwest corner stake of the Parish lode was there?

A. I call that the northwest; those stakes, in 1899 when we located those claims, we put in alder stakes—didn't have any square stakes, and we squared them up, and we found most all of those stakes when Mr. Wettrick and Mr. Hill surveyed the claim.

Q. In 1908? A. Yes, sir; in 1908.

Q. Did you reset any of those stakes, do you remember? A. Yes, sir.

Q. Were you up on this property in 1910, so you could see any of the stakes on there, Mr. Ebner?

A. Yes, sir.

Q. What time? A. I think in November.

Q. Sometime in November? A. Yes, sir.

Q. Of 1910? Yes, sir.

Q. What, if any, stakes did you see at that time?

A. I saw stake No. 5; and some on the end line, I

(Testimony of William M. Ebner.)

don't remember just how many, on the south end line, and stake No. 6. [1000—850]

Q. How do those stakes look with respect to the ones you saw there in 1908?

A. Just the same stakes.

Q. And how with respect to the place they were in—the same place, or were some in another place?

A. They were the same place.

Q. Now, I will ask you, Mr. Ebner, if you have ever noticed any springs flowing into Gold Creek between where the dam of the Alaska-Juneau Company is now and the Ebner dam—any springs?

A. Yes, sir; there are two very large springs, that is, quite large springs.

Q. You never measured them so as to get the capacity of them, did you?

A. No, never measured them.

Q. I will ask you, Mr. Ebner, if you have noticed those springs there in the different seasons of the year? A. That is in the summer and winter?

Q. Yes, sir. A. Yes, sir.

Q. Have you ever noticed about the flow of them in the winter-time? A. I have.

Q. Is there any water coming out then?

A. Yes, it is just about the same winter and summer except when it rains very heavy, it is a little heavier, but it is about the same winter and summer.

Q. Mr. Kinzie, I think, testified on his direct examination in this case, Mr. Ebner, that he sometime had a conversation with you about plans of opening up and developing this property—did you ever have

(Testimony of William M. Ebner.)

any conversation with him concerning your plan?

A. No, sir. [1001—851]

Q. I believe that more particularly his conversation that he stated he had with you was something about the construction of this building that you afterwards put an air-compressor in—did you ever have any conversation with Mr. Kinzie in which you said anything to him about your plans of opening up the property with respect to this building?

A. I never talked to Mr. Kinzie about any plans whatsoever.

Q. Do you remember the approximate time you located what is called the Fractional placer claim, on which, I believe, or near it, the dam was constructed?

A. I don't know the approximate time.

Q. You don't remember what year?

A. I don't remember just what year, but that was located at a different time, I know; Charley Garside located that for me, and it must be way back in the early '90's.

Q. Mr. Ebner, what has been your experience with the flow of water in Gold Creek while you were mining up there, in a general way, both the summer and winter seasons—if you will explain that in a general way as to the quantity of water that there is during the seasons?

A. You mean the difference between winter and summer?

Q. Yes, sir.

A. About the number of inches in the creek?

Q. No, I don't care about the number of inches—it

(Testimony of William M. Ebner.)

is a creek that is lower in winter, isn't it?

A. Lower in the winter, and lots of water in the summer.

Q. About what season, or over what part of the year do you think there would be water in Gold Creek enough to fill both the Alaska-Juneau Company's flume and the Ebner high-line flume, and I just want simply a rough estimate of that, if you can give it to me, Mr. Ebner?

A. I don't know how much water they carry.
[1002—852]

Q. How has it been with you in the winter season with respect to getting water enough to run your 10 and 15-stamp mills while you were operating them—could you get water enough to do that all winter?

A. Most of the time; sometimes it would get down so that I could only run one side of the compressor; the water would get down sometimes to four or five hundred inches at the Ebner dam.

Q. Of course, it depends altogether on the coldness of the winter?

A. It depends on the seasons; some seasons it varies a great deal, the winter sets in without any snow on the ground and the water is very low, and it freezes hard before there is snow on the ground.

Judge WINN.—I think that is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When it rains you have lots of water, and when it freezes you are short, isn't that true, Mr. Ebner?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. You started and worked and operated quite a small mill up near where the Perseverance mill was afterward constructed? A. Yes, sir.

Q. A small 10-stamp mill? A. Yes, sir.

Q. That was taken out by a slide? A. Yes, sir.

Q. And then you went down to the Ebner property and took charge of that? A. Yes, sir.

Q. That was in what year, Mr. Ebner? [1003—853] A. 1895.

Q. There was a 10-stamp mill on the property at that time? A. Yes, sir.

Q. And you afterwards enlarged that by putting in 5 more stamps, and made it 15 stamps?

A. Yes, sir.

Q. You used the water of Gold Creek by taking it out of the same Ebner dam that has been referred to here as the Ebner dam? A. Yes, sir.

Q. And putting it back in the creek immediately below the mill that you have been operating?

A. Yes, sir.

Q. This mill as shown upon this exhibit "S" is the old Ebner mill? A. Yes, sir.

Q. Then you ran along a while and started to build a new mill on the Lotta claim? A. Yes, sir.

Q. That was about what year?

A. That was in 1897.

Q. You put up a mill building? A. Yes, sir.

Q. To hold 40 stamps? A. Yes, sir.

Q. With the intention of enlarging it to 100 stamps later on?

A. No, I don't know that we ever figured on that

(Testimony of William M. Ebner.)

much—40 stamps was about as much as I could see at that time.

Q. You wouldn't say now, Mr. Ebner, that it didn't used to be your intention to put in 100 stamps there, would you? A. Not there; no, sir.

Q. There was an excavation made there for a larger mill, wasn't there? [1004—854]

A. Nothing except the building.

Q. The excavation is on the ground now, isn't it, Mr. Ebner?

A. Not where it would be safe to build a mill.

Q. You wouldn't testify that it wasn't your intention or the intention of the Ebner Gold Mining Company, to put in a mill there, would you?

A. No, sir.

Q. Your intention and that of the Ebner Gold Mining Company was the same, because you were practically the company, were you not?

A. Yes, practically the same.

Q. You not only held the control of the stock, but you conducted the affairs, and you were the company, in most respects at least? A. Yes, sir.

Q. Now, when did you first form an idea of building a mill down at—did you ever have an idea of building a mill in the neighborhood of where Mr. Mackey has since excavated? A. Yes, sir.

Q. In that same spot? A. About that same spot.

Q. How near? A. Practically the same spot.

Q. When did you form that idea of building a mill there?

A. That was soon after my large suit in the United

(Testimony of William M. Ebner.)

States Supreme Court was decided.

Q. Do you remember what year that was?

A. That was in 1900.

Q. In 1900 you formed the intention of building a mill at that point? A. Yes, sir. [1005—855]

Q. At that time, 1900, you had no intention of building on the Lotta claim—is that your testimony?

A. Not in 1900; no.

Q. Isn't it a fact that your intention to build a mill on the Lotta claim continued sometime after 1900?

A. My intention to build a mill, a 40-stamp mill on the Lotta was continued up to about the time the suit was brought claiming the right to foreclose the Ebner property; the case was tried here in the court; I won out in the court here, and that case was appealed by the plaintiff and decided in 1900.

Q. In 1903 you had some negotiations with Mr. Bradley looking towards the sale and purchase of the Ebner property by Mr. Bradley, didn't you?

A. Yes, some.

Q. The negotiations were carried on through Mr. MacDonald?

A. No, Mr. MacDonald had some talk with Mr. Behrends that—I was about to go away and Mr. MacDonald had some talk with Mr. Behrends; Mr. MacDonald didn't come to me; they *said would* like to go in there and make an examination, and told Mr. Behrends they would like to make an examination and he told them all right to go ahead. I left here and went down to San Francisco and all the negotiations I had with Mr. Bradley was to give him permission to

(Testimony of William M. Ebner.)

sample the mine, and then he wanted to know the price, and I gave him the price, that was practically all the negotiations we had.

Q. Didn't you tell Mr. Bradley your plan of development at that time—what your plans were?

A. No, sir; I did not.

Q. Didn't tell him you intended to put a 100-stamp mill on the Lotta?

A. No, sir; that never came up—never was mentioned. [1006—856]

Q. And you never advised Mr. MacDonald to that effect? A. No, sir.

Q. Either in writing or orally? A. No, sir.

Q. Now, I want to refresh your memory, Mr. Ebner—you know Mr. MacDonald was acting for Mr. Bradley at that time—he was Superintendent of the Alaska-Juneau Gold Mining Company?

A. He was Superintendent.

Q. It was the time Joe MacDonald was Superintendent of the Treadwell and also the Alaska-Juneau properties? A. Yes, sir.

Q. And was representing Mr. Bradley in the negotiations? A. Yes, sir.

Q. I hand you here a paper marked for identification Plaintiff's Exhibit No. 38, and ask you to tell me if that isn't the report that you and Mr. Behrends gave Mr. Bradley and Mr. MacDonald on the property at that time, in 1902 or '03, when those negotiations were pending?

A. I don't know anything about this at all.

Q. Have forgotten about it?

(Testimony of William M. Ebner.)

A. I haven't forgotten about this; this has nothing to do with the stock.

Q. That is a report given Mr. MacDonald and Mr. Bradley by the Ebner Gold Mining Company, signed by yourself as President, isn't it?

A. I know it is one of Denby's reports all right; not by me to Mr. MacDonald; I don't know anything about this; I think this is a report all right, but not for Joseph MacDonald, nothing like that—I don't know anything about it.

Q. That is a report made by Denby for you?

A. Made by Denby or Bart Thane, I don't know who.

Q. It says it was made by Denby, don't it?
[1007—857]

A. It looks like Denby's report, yes.

Q. That is Denby's report to you first, and then it was given by you or Mr. Behrends to Mr. MacDonald?
A. That might be.

Q. That is how it got to Mr. MacDonald—it is a report by Denby, Mr. Denby—Mr. Denby was a mining engineer and was working for you at the time, wasn't he?
A. Yes, sir.

Q. And you took Mr. Denby's report and incorporated it in the report you gave Mr. MacDonald?

A. I never gave the report to Mr. MacDonald.

Q. Incorporated it in the report which was handed to Mr. MacDonald by Mr. Behrends?

A. That is the first thing I knew about that; I had no conversation with Mr. MacDonald about the examination; when I came back in the spring the exam-

(Testimony of William M. Ebner.)

ination was already made.

Q. The property was offered to Mr. Bradley, and that states the correct terms, does it not, on which you offered the property?

A. I don't know whether that was the correct terms or not.

Q. Just look at it and see for yourself?

A. So far as I recollect, I think it does.

Q. It contains the report of Mr. Denby besides the terms? A. Yes.

Judge WINN.—I object to the question, if your Honor please, the instrument is the best evidence of what it contains.

The WITNESS.—Yes, I think that states the terms.

Q. You don't personally remember, Mr. Ebner, of giving this to Mr. MacDonald? A. No, sir.

Q. Mr. Ebner, I don't think this states the date those negotiations were had with Mr. MacDonald and Mr. Bradley, the date [1008—858] was in 1903, was it not?

A. I don't remember just what year that was; I was thinking it was before that, but I won't be sure about it—I don't remember.

Q. This paper you say must have been given to Mr. MacDonald by Mr. Behrends, but you don't remember?

A. That is a part of Denby's report—and some terms added on—I don't know anything about that.

Q. You don't recall it?

A. No, sir; I don't; I had no talk with Mr. Mac-

(Testimony of William M. Ebner.)

Donald before I left here; Mr. MacDonald had all his talk with Mr. Behrends.

Q. It is possible that MacDonald got this report from Behrends, isn't it?

A. I don't know how he got it.

Q. Now, Mr. Ebner, in regard to these claims, this Cape Horn claim—that was located by you, in fact, for your own use, wasn't it, Mr. Ebner?

A. No, it wasn't—that is, I had this in mind, Mr. Hellenthal; I knew there was values there sufficient to make a *bona fide* quartz location, and my intention was to recover that ground with the driving of a long tunnel to the Ebner mine.

Q. You had two partners in that claim, didn't you?

A. That was when I located the Cape Horn and Eureka; I had my two prospectors in with me; they went out and done the hard work and I took them in with me.

Q. And they were taken in on the location of the claims with you?

A. They were taken in on the locations with me, but soon afterwards I bought them out.

Q. But they were taken and became joint locators with you? A. Yes, sir.

Q. That is true of the Cape Horn and Eureka both? [1009—859]

A. Both those claims; yes, sir.

Q. What you mean, Mr. Ebner, is that you located those claims with the object in view that if the Ebner Company needed them you would sell them to them, or otherwise make some negotiation about your stock

(Testimony of William M. Ebner.)

and dispose of the claims?

A. If I didn't own the Ebner property I would never have located those claims.

Q. You located them for your own use; they were not located as the property of the Ebner Company, were they?

A. They were located as my own property but with the view that they were to go in as the Ebner property, when we drove that long tunnel.

Q. They were located for your own use and as your own property, were they not?

A. Of course, if you look at it that way.

Q. And before the Ebner Company had a right to them, they would have to buy you out?

A. Would have to buy me out? I would do the same with the Ebner Company as I did with Underwood—I said, "Here are the claims and here are my plans, you better have all the claims so you can go ahead."

Q. And they were to pay you whatever price you agreed upon?

A. They went in with the properties of the company.

Q. And you never sold those claims to the Ebner Company? A. No.

Q. And they had no right to them until they paid you for them?

A. It was a good big portion of the Ebner Company.

Q. The corporation itself had no right to those claims until they paid you for them, had they?

(Testimony of William M. Ebner.)

A. You might put it that way—you might put it that way.

Q. When you had the negotiations with the Jualpa people, you divided the money between the Ebner Company and yourself and partners on that ground did you? [1010—860] A. Yes, sir.

Q. At that time the Cape Horn claim was still owned by you and your two partners?

A. Yes, sir.

Q. And the Ebner Company had no interest in them? A. No, sir.

Q. And you got \$8,000.00, I think, from the Jualpa people? A. Altogether; yes, sir.

Q. That flume was built part way over the Lotta and part way over the Cape Horn? A. Yes, sir.

Q. And you divided by giving the Ebner Company \$5,000.00 and you and your partners took \$3,000.00, is that right? A. That is right.

Q. It was your ground because the Cape Horn was your property?

A. There was a reason for that; I hadn't bought my two partners out; they still owned an interest and they were entitled to a part of the money.

Q. They were entitled to a part of the money?

A. Yes, sir.

Q. And they got their share, and you got your share, and the Ebner Company got its share of the money—that is right, isn't it? A. That is right.

Q. Now, the Cape Horn mill site was located in connection with that Cape Horn lode, wasn't it?

A. Yes, later on.

(Testimony of William M. Ebner.)

Q. Located in connection with the Cape Horn that you and Mr. Lovett located? A. Yes, sir.

Q. Lovett by that time had become interested in the Cape Horn [1011—861] lode in some way, hadn't he?

A. I think he did have an interest in the Eureka lode.

Q. And also the Cape Horn, and a Mrs. Zimmerman was also interested?

A. I don't remember; I am not sure about that.

Q. But anyhow the Cape Horn Mill Site was located in connection with this Cape Horn and this Eureka lode? A. Yes, sir.

Q. By you and Mr. Lovett? A. Yes, sir.

Q. Lovett was interested in them?

A. Lovett was my partner in any location that I made.

Q. You were mining partners together?

A. We were mining partners.

Q. That was outside of the Ebner Company?

A. He had no interest in that at all; but we had an understanding that for a nominal sum he would sell any interest he might have.

Q. Anything that he might have in the Ebner Company, that he would be willing to sell?

A. Yes, sir.

Q. Now, that mill site location remained attached to the Cape Horn and Eureka until about 1908, and then you located the Cape Horn lode, the Cape Horn No. 2—I am trying to get at the time you located that—1908, wasn't it, that you located it?

(Testimony of William M. Ebner.)

A. Yes, I think it was the latter part of August, 1908.

Q. That covered the mill site that you and Lovett had formerly located? A. Yes, sir.

Q. You found quartz stringers on it and thought it would be best to locate it as a lode claim?

A. I always supposed that quartz stringers were on the original [1012—862] Cape Horn lode, but afterwards I had it surveyed and found it was outside of the Cape Horn.

Q. And it would come on this mill site?

A. Yes, sir.

Q. And you located it as a quartz claim instead of a mill site because there was mineral on it?

A. Yes, sir.

Q. And that location you transferred to a man by the name of Martin? A. Yes, sir.

Q. And that is all you know about it, I suppose?

A. Martin bought it from me; I transferred it to Martin because at that time I understood Mr. Martin was the representative of the company that practically owned the Ebner property.

The COURT.—When was that?

A. That deed to Martin, I think, was a year ago last January.

Q. And up to that time the Cape Horn No. 2 was your property? A. Yes, sir.

Q. Then it became Martin's property?

A. Yes, sir.

Q. And what happened after that you don't know?

A. I don't know what happened after that; no, sir.

(Testimony of William M. Ebner.)

Q. Now, this high-line flume, Mr. Ebner, that has the grade and the same elevation that your old flume had, hasn't it? It takes the water out at the same place? A. Takes it out at the same place.

Q. And is on the same level with your old flume?

A. I don't know whether it is just exactly—it is approximately.

Q. The term "High-line Flume" is a technical term—the flume itself is no higher than the old flume line, is it?

A. I don't know why they call it the high-line flume; I know very little about that flume. [1013—863]

Q. Those trees that you spoke of, are they at corner No. 6 of the Lotta or at corner No. 5?

A. The northwest corner, what is known as No. 6.

Q. That would be down by the road?

A. The one up above the road, at the north end.

Q. Those trees are pretty large trees, aren't they?

A. Fair size trees—6 or 8 and some of them 12 inches in diameter.

Q. That is pretty large for trees in that country, isn't it? A. Yes; on that hillside.

Q. You say you thought at that time there was some blazing on them?

A. I know there was some blazing on them; and pretty well grown up.

Q. There are also some trees at corner No. 5?

A. Nothing but big alders there.

Q. Now when was it that the Jualpa people took the water out of Gold Creek when you had that

(Testimony of William M. Ebner.)

negotiation with them?

A. I am not sure about that—I think it was in 1897.

Q. 1897?

A. Along about '97 or '98; I wouldn't be sure about that.

Q. That was after you had made up your mind to build a mill on the Cape Horn claim some place, wasn't it?

A. Well, not fully at that time, but I expected to—I thought I recognized the fact that Shady Bend was the proper place to tap that Ebner mine with the new tunnel and to bring the ore out that way, and for at least a compressor plant there, or power there for a compressor plant; I had never fully decided whether that was the correct place for a very large mill, or to come down to the beach; and when I had my survey made I also had a survey made on the beach.

Q. You negotiated at one time with Captain Johnson, didn't you, to buy—

A. Yes, sir. [1014—864]

Q. Do you remember what date that was, Mr. Ebner—about what year?

A. I don't remember just what year that was, Mr. Hellenthal.

Q. That was about 10 years ago, wasn't it?

A. More than that.

Q. Twelve years ago? A. Yes.

Q. Ten or twelve years ago? A. All of that.

(Testimony of William M. Ebner.)

Q. Maybe along about 10 or 12 years ago, in that neighborhood? A. Yes.

Q. At that time you negotiated to buy a piece of ground on the beach here to put up a mill?

A. Yes, sir.

Q. The \$8,000.00 that the Jualpa people paid you was simply for the right of way across the creek there and for the water right?

A. Simply for the right of way.

Q. They were to get the water up out of the creek?

A. They were to have the use there just as long as we saw fit for them to have it.

Q. That would have taken the water away from you in the mill at Shady Bend, wouldn't it?

A. It would—I had a talk with the Jualpa people, and I said that there wasn't any objection to their using the water as long as we saw fit for them to take it; I wouldn't let them go on any patented ground to make a water location.

Q. They never posted a notice there or made a location? A. No; they told me they didn't.

Q. They actually took the water out of the creek, didn't they? A. They did part of the time.

Q. And if the water was taken there you wouldn't have it for [1015—865] Shady Bend, would you?

A. No.

(Whereupon an adjournment was taken until 10 o'clock to-morrow morning.)

(Testimony of William M. Ebner.)

MORNING SESSION.

August 4, 1914, 10 A. M.

WILLIAM M. EBNER, on the witness-stand.

Cross-examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, you operated the Ebner property until what year? A. 1907.

Q. 1907? A. Yes, sir.

Q. And then you didn't continue to operate at the old mill? A. Yes, sir.

Q. The old mill wasn't operated from that time on. A. No, sir.

Q. But you continued, however, President of the Company while Mr. Behrends was Secretary?

A. Yes, sir.

Q. That was up to what time?

A. Up to two or three years ago; I don't remember exactly.

Q. Up to a couple years ago you were President and Mr. Behrends Secretary of the Ebner Gold Mining Company? A. Yes, sir.

Mr. HELLENTHAL.—That is all. [1016—866]

Redirect Examination.

(By Judge WINN.)

Q. On that point, Mr. Ebner, do you know when Mr. Behrends ceased to be Secretary of the company? A. No, I don't know just when it was.

Q. You don't know if you were President of the company all the time Mr. Behrends was Secretary?

A. No, I don't know; Mr. Behrends might have

(Testimony of William M. Ebner.)

been continued as Secretary.

Q. I will ask you if you do know as to whether or not the Ebner Gold Mining Company's books were just procured from Mr. Behrends something less than a year ago—do you know anything about that?

A. No, I don't.

Q. Then you don't know when he turned over the books of the Ebner Gold Mining Company, Mr. Ebner?

A. No, sir.

Q. Now, Mr. Hellenthal questioned you considerably about some of the mining claims that were located up there in your name, and about certain considerations you may have received by reason of conveying those claims—now, how was the Parish No. 1 and the Parish No. 2 lodes located; were they located in your own name?

A. They were located in my own name.

Q. And did you afterwards convey them to the Ebner Gold Mining Company?

A. Yes, sir.

Q. What consideration, if any, did you receive for that conveyance?

A. Not any.

Q. For whom were those claims located in the first place? [1017—867]

A. They were located in my name, but for the benefit of the Ebner Gold Mining Company.

Q. Now, let us get down to some other claims—Cape Horn No. 1, do you remember whose name that was located in?

A. Yes, that was located in the name of George Duke, Fred Rinshaw and myself.

Q. Now, I will ask you, Mr. Ebner, what, if any,

(Testimony of William M. Ebner.)

consideration there was when that property was turned over to the Ebner Gold Mining Company?

(Not answered because of objection.)

Q. For whom, or what corporation, was that Cape Horn claim taken up, Mr. Ebner?

A. That was taken up for myself; that was taken up some years before I acquired the Ebner Gold Mining Company; I was the owner of the Cape Horn all the time; that was after I had purchased the interest of Mr. Duke, and other interests that came in at different times; and after I acquired title to the Ebner Gold Mining Company, that was reserved especially for the Ebner Gold Mining Company, and when I sold my stock to F. L. Underwood in the Ebner Gold Mining Company I conveyed the Cape Horn and the Eureka lode claims by deed to F. L. Underwood.

Q. Did you receive any special consideration for that conveyance? A. No, sir.

Q. Now, about the Cape Horn No. 2, which Mr. Hellenthal questioned you considerably about; and the conveyance that you made to a man named Martin—now, did you take up the Cape Horn No. 2 under the same circumstances as you did Cape Horn No. 1, or when did you take that up?

A. The Cape Horn No. 2 was originally located as a mill site in 1908; I had sold my stock of the Ebner Gold Mining Company, [1018—868] and deeded the Cape Horn and Eureka, and the Cape Horn and Eureka mill sites to F. L. Underwood. After surveying the Cape Horn lode I found the outside of the

(Testimony of William M. Ebner.)

Cape Horn lode property was a ledge, and I didn't know it was outside of the Cape Horn; therefore, I located the Cape Horn No. 2 as a lode claim, and located it in my own name, all the time expecting to have it conveyed to Mr. Underwood or whoever the proper parties might be who were in possession of the Ebner Gold Mining Company.

Q. Now, then, Mr. Hellenthal questioned you considerably about some consideration that you may have received when you made this conveyance to Martin; I wish you would state to the Court just under what circumstances the conveyance of the Cape Horn No. 2 was made by you to the man by the name of Martin—under what circumstance, for what consideration, and so forth, was that conveyance made, and all about it.

A. When I made the conveyance to Mr. Martin I had understood that Mr. Underwood was out of it, and that Mr. Martin was the true representative of the company controlling the Ebner mine, Alaska-Ebner, or whatever that might be; I don't know just what they called themselves; I had every reason to believe that Martin was the proper man to receive that deed, and I conveyed that for a consideration of \$100.00—that consisted mostly of the surveying—I had that all surveyed in 1908, and Mr. Underwood had never paid me for the surveying, and the location notices, together with other matters, and the survey amounted to about \$100.00, and I charged him that nominal sum in order not to be out anything that I paid on it.

(Testimony of William M. Ebner.)

Judge WINN.—If your Honor please, I would like to ask the witness one question on direct examination.

The COURT.—Very well. [1019—869]

Q. Mr. Ebner, you testified yesterday quite considerably about the developments that have taken place upon the Ebner Gold Mining Company's property since you sold your stock to Mr. Underwood, and also the development work and actual work that you had done prior to that time—I will ask you, Mr. Ebner, in your opinion and judgment as to what size mill, or capacity mill would the developments upon the property as they are now justify the immediate building of?

A. From what I saw, the development underground in these new workings, and what I know of the old workings, both, it would be my judgment that the mine was ready now for a 1000-ton plant—sufficient to warrant a 1000-ton plant.

Q. You mean for the mining and milling of the ore at the rate of 1000 tons per day? A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—No questions.

(WITNESS EXCUSED.) [1020—870]

The defendant, to further maintain the issues on its part, introduced as a witness DOWNIE D. MUIR, JR., who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Downie D. Muir, Jr., for Defendant.

Direct Examination.

(By Judge WINN.)

Q. What is your name?

A. Downie D. Muir, Jr.

Q. What is your business, Mr. Muir?

A. Mining engineer.

Q. How long have you been following this profession or calling as a mining engineer?

A. About eight years.

Q. Just state briefly, Mr. Muir, what experience you have had in the profession and business which you say you have been following for this length of time.

A. I have had experience in most of the mining States in this country for different periods—for different lengths of time.

Q. When did you first come to Juneau, Mr. Muir?

A. My first trip was made here in 1911, but in connection with the Ebner property in 1913.

Q. Have you had any experience in your profession or business in mines in Alaska?

A. I have.

Q. You came here first in 1911, but at that time you had not gotten established with the Ebner property?

A. No; that was just in passing through going to the Westward.

Q. Going out there on some professional business?

A. Yes, sir. [1021—871]

(Testimony of Downie D. Muir, Jr.)

Q. Now, when did you first have anything to do with the Ebner property, Mr. Muir?

A. 1913—I landed here in Juneau on the 28th of July, 1913.

Q. Did you go upon the Ebner property at that time? A. Well, within a day or two.

Q. I will ask you, Mr. Muir, whether or not at the time that you went upon the property at this last-mentioned date the new air-compressor, the one down at Shady Bend, near the mouth of the tunnel, was installed?

A. The compressor was installed and the compressor house built.

Q. Did you from that time have any connection with the Ebner property? A. I did; yes, sir.

Q. In your connection with the Ebner property, whom did you represent, Mr. Muir?

A. The United States Smelting, Refining and Mining Exploration Company.

Q. And that commenced in the latter part of June, did you say, or the first of June?

A. I was here as their representative from the 28th of July, 1913, up to the present time.

Q. Now, I will ask you since your arrival here at that time if you have been connected with the development and opening up of those mines?

A. I have been in charge of the development at that point since the first of November.

Q. The first of last November? A. Yes, sir.

Q. Do you remember the time they first commenced using this new compressor that is installed

(Testimony of Downie D. Muir, Jr.)

at Shady Bend near the mouth of the new Ebner tunnel? A. On August 21, 1913. [1022—872]

Q. What has that compressor been used for since that time?

A. Furnishing compressed air to carry on development work through the lower tunnel located at Shady Bend.

Q. And that is the tunnel that is marked on Defendant's Exhibit "S" as "New Tunnel"?

A. New Tunnel; yes, sir.

Q. When you got here in July, 1913, at what stage of development, or how far had that tunnel been driven in? A. 1173 feet.

Q. Who did you find up there in charge of the work when you came here?

A. Mr. Mackay was the man in charge of the ground.

Q. Has the driving of that tunnel been continued since the time you came here and took charge of it?

A. Yes; it has been continued with the exception of about a month, I think—from January 18th to February 12th, at which time they didn't have sufficient water to operate, and we had an accident to our pipe-line.

Q. What year was that?

A. That would be 1914.

Q. How many drills, and what size drills, has that new air-compressor been driving for the use of the extension of this tunnel and the work that you have been doing underground on this property?

A. Well, in driving the main cross-cut we used

(Testimony of Downie D. Muir, Jr.)

three drills; after that we encountered the ore, and the number of drills averaged from seven to ten and eleven.

Q. When you were running the cross-cut, you mean when you were running the new tunnel?

A. The work has been done from this new tunnel.

Q. You call that cross-cutting, do you?

A. Cross-cut tunnel from Shady Bend. [1023—873]

Q. Has this work been continuously or otherwise carried on, with the exception of this delay you just mentioned in your answer? A. It has.

Q. To what extent, Mr. Muir, has that new tunnel, as referred to on Defendant's Exhibit "S," been driven in from its face?

A. Well, the present length of the tunnel is approximately 3500 feet.

Q. And what is the size of it?

A. 8x8 in the clear. In addition to that we have driven drifts to the east and to the west from which numerous cross-cuts have been driven.

Q. About, in a rough way, how much driving and cross-cutting have you done in addition to the driving of this new tunnel—just approximately?

A. Well, the total amount of work which we have done since August 21, 1913, is about 4,400 feet; that comprises drifts, cross-cuts and raises—in addition, of course, to the annual assessment work which has been done.

Q. How many shifts of men have you kept at work during that time—during the time that you have

(Testimony of Downie D. Muir, Jr.)

had charge of the driving of the tunnel, and so forth?

A. I think there was but one month, some time in the latter part of 1913, that we had less than three shifts on; during that month we had two, so that the balance of the time we have been operating we have had three shifts continuously at work.

Q. How many men, Mr. Muir, have you had—that is generally speaking, in running this tunnel and work that you have been carrying on on this property, since you have been there?

A. Since striking the ore on April 1st, we have had about 100 [1024—874] men at work, which would be an approximation of 33 men per shift. Just at present I think we have an excess of 100. While we were driving the main cross-cut tunnel our force varied between 40 to 60.

Q. I will ask you whether or not that work is going ahead at the present time? A. Yes, sir.

Q. I will ask you if the development of the ore bodies there justify the continuation of this work.

A. In our opinion they do.

Q. Now, I will ask you, Mr. Muir, if it is your intention to continue this development and finally to operate the mines and mill the ore that is taken from this property?

A. Yes, sir; and not only are we going to continue development as we have in the past, but we are going to increase the development, and we are going to run additional faces.

Q. Now, Mr. Muir, how long do you think it will be, in your judgment, before you will be able to

(Testimony of Downie D. Muir, Jr.)

utilize for the purposes which you have indicated the water of the new Ebner flume to its full capacity?

A. I should say that within a year to 18 months development will be carried on on such a scale that we will use the entire flow of that flume for power purposes.

Q. Now, just state to the Court whether or not the indications as they appear now from the development done, in your opinion, will justify the carrying on of this work? A. They certainly do.

Q. Do you know, approximately, Mr. Muir, how much money your company has expended on this work—I don't mean to a hundred dollars or a cent or anything of that kind, but approximately how much money your company has advanced to carry on this work? [1025—875].

A. Well, our total expenditures on the property to date, or incidental to the property, amount to about \$226,000.00.

Q. You know that there has been other money expended also in carrying on this work since you first saw this property—or was it since you first saw the property? A. That I couldn't say.

Q. You didn't commence making expenditures under your company until about what time, Mr. Muir? A. I am not informed of that.

Q. Was there a part of the time that you did not receive money from the Smelting Company?

A. I presume there were some expenditures before I landed in Juneau on the 28th of July, 1913, of which I know nothing about.

(Testimony of Downie D. Muir, Jr.)

Q. You don't know who furnished that money, whether it was the Smelting Company or someone else?

A. No; I am speaking only as regards the Smelting Company.

Q. Now, I wish you would state to the Court how, if you have at all increased the use of the water through this new flume since you took charge of the work.

A. Well, our power consummation has increased very materially since the tunnel was started; when we started we were only using three drills; now, as I say, we are using from seven to eleven; we have additional fans, a small mill, crushing machinery in the assay laboratory—I should say that our power consummation is at least double what it was when we started.

Q. To what extent, if any, have you increased the use of the water since the trial of this case upon the preliminary hearing?

A. That previous answer will answer that question also, Judge.

Q. Do you know approximately how much water has been used in the [1026—876] flume—that is, as to how much—does it fill the flume, the water that you are using?

A. Its carrying capacity, you mean?

Q. No, I mean as to what fractional part of the carrying capacity of water have you absolutely got use for—that is, the full capacity of the flume or how?

(Testimony of Downie D. Muir, Jr.)

A. No; we are not using the full capacity of the flume.

Q. Do you know approximately how much of the capacity of the flume—what fractional part?

A. I should say between a fourth and a fifth.

Q. Now, I will ask you whether or not, Mr. Muir, if these developments are carried on as you say you expect to, this flume will carry all the water that you will need, or whether you will need additional water?

A. Eventually we would need more water than we could get through that flume.

Q. What, if any, sort of a stamp-mill arrangement, or mill, has been put upon this property since you have had charge of it? A. A 5-stamp mill.

Q. Where is that built, Mr. Muir, with reference to where the mill site is graded off on the Cape Horn No. 2 claim?

A. About three or four hundred feet east of the old mill grade at Shady Bend.

The COURT.—Are you familiar with that exhibit “S”? A. Yes, sir.

The COURT.—Will you locate on exhibit “S” the point where your 5-stamp mill is, and mark it with some appropriate sign? (Witness marks on exhibit “S” the point “5-stamp Mill.”)

Q. Now, what have you marked this point?

A. Designated it as 5-stamp mill.

Q. For what purpose, Mr. Muir, was that mill erected and put in there? [1027—877]

A. For experimental purposes and for the sampling of the ore.

(Testimony of Downie D. Muir, Jr.)

Q. Why haven't you erected a mill for the mining and milling of the ore to be taken from the property?

A. Well, that 5-stamp mill has been in operation about two months, and it is impossible in two months to arrive at any conclusions, mineralogically or otherwise, on the ore we have developed.

Q. In other words, as I understand it, you have not arrived at that stage yet to know what size stamp mill or what kind of machinery, and so forth, you will need in handling the ore bodies on this property? A. We have not.

Q. Now, Mr. Muir, I wish you would, in a brief way, state to the Court what, if any, ore bodies you have discovered in the driving of this new tunnel.

A. The continuation of the ore down to the present tunnel level that was formerly worked by Mr. Ebner, some 500 feet on the dip of the vein above us.

Q. What depth, approximately, is this new tunnel under the old Ebner workings by the mill?

A. 430 feet vertically, or about 500 feet on the dip of the vein.

Q. Have you been through all the old workings of the Ebner mill? A. Which mill?

Q. The old Ebner mill—that is, the underground workings, and so forth, that were there before you took charge of the property?

A. I have been through all the underground workings of the mine, yes; that is, what were accessible.

Q. Now, have you described fully to the Court

(Testimony of Downie D. Muir, Jr.)

what ore bodies have been developed there by reason of the running of this new tunnel and also taking into consideration the old Ebner workings, and what you found in examination of those? [1028—878]

A. The driving east and west from the main cross-cut tunnel at the junction of the ore body extends some 1400 feet at present; our cross cuts have shown varying widths, in most cases similar to the width shown above.

Q. Now, Mr. Muir, I will ask you at the time that the application was made for a temporary restraining order in this case, to state approximately, if you know, the amount of water that you were getting through the new Ebner flume?

A. When was the order asked for—January?

Q. In January; they complained of a shortage commencing in December, 1913, and the preliminary hearing, I think, was had in January, 1914.

A. Well, we shut down from the 18th of January to the 12th of February, partly through an accident to the pipe-line, and partly from the fact that we couldn't get enough water to operate with.

Q. Now, you know the flume of the plaintiff company, the Alaska-Juneau Gold Mining Company's flume? A. Yes.

Q. Do you know what head, approximately, they have at their air-compressor at Snow Slide Gulch, near the portal of their tunnel? A. 427 feet.

Q. Which, the Alaska-Juneau?

A. You asked for the Alaska-Ebner, did you not?

Q. No, I mean the Alaska-Juneau?

(Testimony of Downie D. Muir, Jr.)

A. Ninety foot head—ninety or ninety-five feet.

Q. What head has the Ebner Gold Mining Company there at its penstock down to its air-compressor? A. 427 feet.

Q. I will ask you as to whether or not at the time you closed [1029—879] down for the want of water, that amount of water would have been of any benefit, in your opinion, to the Alaska-Juneau Company for running its air-compressor at Snow Slide Gulch?

(Question not answered because of objection.)

Q. At the time, Mr. Muir, that you say you were shut down for the want of water, do you know approximately how much water was running through the new flume of the Ebner Company?

A. Between 4 and 6 second feet—that would be 160 miner's inches to 4 second feet—for 6 second feet, 240 miner's inches.

The COURT.—This was on the 18th of January, you say?

A. If my memory serves me correctly that was on the 28th or 29th of January.

Q. That was at the extreme low water in Gold Creek in January, 1914, was it, Mr. Muir, as you recollect it?

A. Yes; either one of those two days—a day or two before or a day or two later—somewhere around there, within that week.

Q. I will ask you as to whether or not you know if this amount of water would have been of any benefit to the Alaska-Juneau Company if they had con-

(Testimony of Downie D. Muir, Jr.)

ducted it to their air-compressor at Snow Slide Gulch?

A. It would not have run both sides of their compressor at 100 pounds air pressure.

Q. Well, would there have been enough to run one side, in your judgment?

A. I cannot say as to that.

Q. What would that depend on, Mr. Muir—you say you cannot say, why is it that you cannot say?

A. Well, I could probably figure it out.

Q. Could you figure it out—how much power that amount of water would develop at the head the Alaska-Juneau had down at its air-compressor?
[1030—880]

A. Four second feet would give them between 40 and 50 horse; 75 per cent efficiency equals 40; 6 second feet would give them around 60 at a head of 90 feet.

Q. 60 what? A. Horse-power.

Q. You are not sufficiently acquainted with the kind of air-compressor they had down there to tell exactly what they could do with that amount of power, or are you sufficiently acquainted to tell us?

A. The compressor is rated at seven drills; I believe it is a 750-foot machine, and I would say it would take 150 horse-power to run it at speed, 100 pounds air pressure.

Q. Both sides of it? A. Yes.

Q. The only experience you have had with the Gold Creek water as to the stages of the water during the different times of the year has been since you com-

(Testimony of Downie D. Muir, Jr.)

menced work on the Ebner property, hasn't it, Mr. Muir? A. Yes, sir.

Q. I will ask you, Mr. Muir, what is meant by jacket water in connection with air compressors?

A. Water used for cooling purposes on the cylinders.

Q. I will ask you, Mr. Muir, whether or not there are any springs that run into Gold Creek between the Alaska-Juneau dam and its intake and the Ebner dam and that company's intake?

A. Yes; there are two springs there on the northwest side of Gold Creek—one just above the Ebner cabin, and one below the Ebner cabin; both of which are between the Alaska-Juneau dam and the Ebner dam.

Q. And the water flows into what?

A. Into Gold Creek. [1031—881]

Q. I will ask you if you have ever measured the capacity of those springs, Mr. Muir?

A. Yes; I had them measured last January or February at the low stage.

Q. What did you find was the measurement?

A. The one below the cabin, a flow of 154 gallons a minute, and the one above between 25 and 30.

Q. Gallons per minute?

A. Gallons a minute.

Q. What stage of the water in Gold Creek was this that you made these measurements?

A. Well, through those two or three months there it was the low stage, so they were made at the low stage.

(Testimony of Downie D. Muir, Jr.)

Q. Did you make that measurement between December, 1913, and January, 1914?

A. No; I think the measurements were made some time in January or February, 1914.

Q. It was approximately what stage of water in Gold Creek at the time you made those measurements? A. Low stage.

Q. Now, Mr. Muir, I will ask you if the time this injunction was applied for, and at the time of the January hearing in this case, whether or not your flume—I mean the Ebner Company's flume—at its dam would take from the bed of the creek all of the flow of the creek?

A. Well, the Ebner dam is built just at the head of a little basin there that is full of gravel, and it is impossible, unless we would dig down through that wash to bed-rock to get all of the flow of Gold Creek into the Ebner flume, into the Ebner intake; I should say there is 25 per cent loss by seepage. [1032—882].

Q. How is it in the dam, is there a seepage of water there?

A. It would depend whether the dam is built on bed-rock, and whether the dam is tight or not.

Q. Now, I will ask you, Mr. Muir, whether or not this amount of water in Gold Creek, by reason of seepage water between the Ebner dam and the Alaska-Juneau dam, and the water that comes into the creek from the springs as you have indicated, would furnish the Alaska-Juneau Company sufficient water for jacket water in running their air-compressor at Snow Slide Gulch?

(Testimony of Downie D. Muir, Jr.)

A. Yes; a great plenty.

Q. I will ask you, Mr. Muir, if you know something of the Alaska-Juneau Company's mill which Mr. Kinzie has testified concerning, and the others, down here near the beach at Juneau?

A. I have been through it.

Q. I will ask you if at the low stage of water that you found in Gold Creek last season, or in January this year,—if that amount of water would have furnished the Alaska-Juneau a sufficient quantity of water to feed its batteries at this mill down at the beach?

A. It would depend on how much water they are going to use per ton milled.

Q. Well, while we are on that subject you heard Mr. Ebner's testimony concerning in his his judgment the amount of ore that has been developed by reason of these works on the Ebner property, and he said in his judgment it would justify the erection of a mill and the handling of one thousand tons of ore per day. Now, I will ask you if you know about how much water it takes per ton of ore in ordinary practice, in mining operations?

A. Well, that varies a great deal, with different conditions [1033—883] and different sections of the country, and whether the water is scarce, but I would say anywhere from 7 to 9 tons of water per ton of ore.

Q. What would you say as to whether that would necessitate the using of the new Ebner flume to its full capacity?

(Testimony of Downie D. Muir, Jr.)

A. Well, I would have to figure that up.

Q. Taking into considerations the workings that would run a mill of this size?

A. Well, if you consider the milling end, the power end, and the battery feed end, and so forth and so on, I would say there wasn't enough water in the flume to do it.

Q. If it was run to its full capacity?

A. Yes, sir.

Q. Well, now, could you give any further answer about whether or not this water at low stage, as you found it in January of this year, would furnish sufficient water to feed the batteries of the Alaska-Juneau mill?

A. If I am not mistaken, in the preliminary hearing Mr. Kinzie testified he was going to use 18 tons of water per ton of ore, and they have got 50 stamps down there, and are going to get 18 tons of ore per stamp for 24 hours—I would say that the low season between 4 and 6 second feet of water would just about do it; if he increases the size of his mill, it would not, if he uses the same amount of water per ton of ore.

Q. I will ask you, Mr. Muir, if you have, during this past summer and since the application for a temporary restraining order in this case, observed the amount of overflow water that the Alaska-Juneau people have said that entered their flume down near their mill here in Juneau—their new mill?

A. Yes; at different times I have been down there

(Testimony of Downie D. Muir, Jr.)

or at a point [1034—884] where I could see it, and have noticed it.

Q. Has there been a continuous overflow?

A. It has been flowing every time I have been down there or happened to look down there.

Q. You have seen it— A. Frequently.

Q. Mr. Kinzie in his testimony testified, as I remember, that that overflow of water was necessary for carrying off their tailings; I will ask you, in your opinion, whether or not that amount of water that has been overflowing there would be necessary to carry off the tailings from that mill, especially with the mill at its present capacity?

A. I should say that the tailings could be carried off on that very steep grade they have there with considerably less water than they have been using—that is, from the overflow end.

Q. I will ask you, Mr. Muir, if you have seen any waste water during this summer going out of the Alaska-Juneau Company's flume between Snow Slide gulch and down where they put in the new air-compressor? A. No.

Q. Have you seen any overflow water up there any place near their flume?

A. Yes; just above what I believe they term tunnel No. 3.

Q. What they term tunnel No. 3 on their flume line? A. Flume and tram lines, yes.

Q. Where is that with reference to where the mouth of the Ebner Company's new tunnel is situated on the opposite side of the creek?

(Testimony of Downie D. Muir, Jr.)

A. It is on the opposite side of the creek, and probably a quarter of a mile below.

Q. To what extent has there been overflow water there, approximately? [1035—885]

A. I never measured it, and I couldn't say.

Q. Well, has there been a small or large stream of it?

A. Well, there has been a pretty fair size stream there; I should say that amount—just as an estimate—one-tenth of what their flume would carry.

Q. Have you measured and ascertained as near as practical the carrying capacity of the new Ebner flume which you have been taking water from to run the new air-compressor? A. Yes.

Q. What is that, Mr. Muir?

A. Between 75 and 80 second feet.

Q. How many miner's inches, approximately, would that be?

A. 80 second-feet would be 3,200 miner's inches.

Q. 32 or 3500 miner's inches?

A. 3200 miner's inches.

Q. Did you ever measure the capacity of the Alaska-Juneau's flume, the one which they testified concerning in this case?

A. I never measured it to measure the size of the flume, but in the flow of water I calculate about 2200 miner's inches.

Q. What did you make that calculation from, Mr. Muir—what part of the flume line?

A. Well, that is the flume line between Gold Creek and the No. 3 tunnel.

(Testimony of Downie D. Muir, Jr.)

Q. I will ask you if you know approximately where the intake of the Alaska Electric Light Company's flume is on Gold Creek? A. I do.

Q. I will ask you what becomes of the water after it is used by you at the new air-compressor, for the purposes for which [1036—886] you have been using it—after you have used it?

A. It is returned to its channel in Gold Creek?

Q. Could you indicated approximately on Defendant's Exhibit "S" where the water goes back in Gold Creek after you have used it, Mr. Muir?

(Witness does so.)

Q. How have you marked it?

A. I marked that "Course of water returned to Gold Creek after being used."

Q. Where is that point on Gold Creek, above or below the Alaska Light Company's intake?

A. About half a mile above.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That point, Mr. Muir, however is below the dam of the Alaska-Juneau, and below their intake, isn't it? A. Yes, sir.

Q. And the place the water is discharged from the Alaska-Juneau Gold Creek compressor is approximately the same as the place where the water is discharged from your compressor? A. That is right.

Q. Not exactly the same but about the same,—that is right isn't it? A. That is right.

Q. The head at the Alaska-Juneau compressor is

(Testimony of Downie D. Muir, Jr.)

about the same as the head at the old Ebner mill, isn't it?

A. The head of the old compresor plant of the Ebner is 235 feet, if I am not mistaken.

Q. That is down on the Lotta? [1037—887]

A. Yes, sir.

Q. Just above the Alaska-Juneau dam?

A. Yes, sir.

Q. That is the new building?

A. That is the compressor plant.

Q. Now, I am talking about the old Ebner mill, the original 10 and 15 stamp mill—the head there is about the same as it is at the Alaska-Juneau compressor at Snow Slide gulch, isn't it, within four or five feet the same?

A. I have never measured that head so I don't know, but by looking at it it is probably a little greater than the Alaska-Juneau head, not much.

Q. Now, the flow of water in the winter time is affected by the action of frost upon the running water, isn't it—the frost is what more than anything else determines the flow of water in the creek, Mr. Muir, isn't it?

A. The lower temperature would affect the snow flowing in that causes the stream.

Q. The water running over the bed of the creek freezes up, doesn't it?

A. If it runs far enough; yes, sir.

Q. And the temperature, the farther up you go the colder it gets—that is, where the mill is?

A. Yes, sir.

(Testimony of Downie D. Muir, Jr.)

Q. It is colder up there than it is farther down the creek?

A. I believe the temperature from here to Perseverance varies six or seven degrees.

Q. In other words, where there is a flow of 700 inches at the Red Mill, there would only be 300 at the Ebner?

A. I don't know whether it would be that ratio or not; it would certainly be more down below if it were running, but it would not be more than half. [1038—888]

Q. That is about the ratio, isn't it?

A. There would be an increase.

Q. If there were 400 at the Ebner dam, how much would there be at this point at the Electric Light Company's intake? A. Four hundred what?

Q. Four hundred inches?

A. At the Ebner dam?

Q. Yes?

A. Well, there would be 400 inches at the dam, plus 25 per cent seepage, plus the two streams that flow in above your intake, then it would depend on how much you took out as to how much would be left in the Light Company's flume.

Q. If they didn't take out any from the creek—if the creek was permitted to flow in its natural channel?

A. It would be just the amount I have stated plus any streams that run in, such as are running in the stream now.

Q. In the winter time, I am talking about Mr.

(Testimony of Downie D. Muir, Jr.)

Muir, when the action of the frost upon the water would have to be considered—the action of the frost would not be so great, for instance, from the Ebner dam down as it would be from the Ebner dam up—that is right, isn't it?

A. It would not be as cold below; no.

Q. And the flow of the water would not be diminished in the same proportion?

A. You would have more water flowing below, and probably the decrease would be greater on account of the corresponding increase of water flowing at the lower point.

Q. You think the action of the frost upon the water would decrease the water and would effect a greater decrease in the quantity of water because there is a greater quantity to be affected by the frost? [1039—889] A. I don't understand you.

Q. Now, where the volume of water is greater—a large volume of water is not affected by the frost to the extent that a small volume is?

A. Approximately speaking, no.

Q. Small streams will freeze up quicker than larger streams? A. That is right.

Q. Now, you know the stream is smaller above the Ebner dam than it is below the Ebner dam, don't you? A. Right above the Ebner dam?

Q. Yes.

A. No, sir; I don't; I know that there should be the same amount of water in the creek above as there is below if some is not taken out.

Q. There are some springs flowing into the creek?

(Testimony of Downie D. Muir, Jr.)

A. There are two springs below our cabin.

Q. And other streams, are there not?

A. Not in the winter.

Q. Now, speaking of those springs on the Ebner property that you have referred to—the flow of those springs would not benefit anyone any considerable distance below the springs, would they, Mr. Muir; in the winter time when the freeze is severe, wouldn't that water freeze up as it runs over the ground?

A. If that water had to flow from the point it enters Gold Creek to the tunnel under the same conditions, I would say possibly some of it might freeze before it gets here; but that is not the case, it is constantly getting lower, and from my observation that water flows pretty well right down the creek.

Q. You know, however, that water would never reach the Alaska-Juneau compressor if there were no other water to flow to [1040—890] the compressor but that water—if that was the only water that were available for the Alaska-Juneau compressor in Snow Slide gulch and was conveyed through the flume in the general way, during the winter months, don't you know that that would never reach the Alaska-Juneau compressor?

A. No, sir; I don't know anything of the kind, I know this: The distance from where those springs enter the creek from your dam is somewhat less than 900 feet, and from the time they passed your dam they are in a covered flume; now, if you could get any water through your flume at that season of the year you can get that amount of water through.

(Testimony of Downie D. Muir, Jr.)

Q. Don't you know, Mr. Muir, that when you run water through a flume—a small quantity of water that way, it will freeze right up?

A. I know that anchor ice will form in any quantity of water; but that water keeps going through your flume; your flume was full of ice last winter, but you were getting some water through it.

Q. But the fact remains that the water you get 50 or 100 feet down the flume is very much less than what you get 50 or 100 feet farther up the flume, because it keeps freezing as it passes down, doesn't it?

A. I will admit that such will occur at a certain temperature, but the period of time at which those temperatures occur is the minimum; you might be bothered only two or three days or two or three times during the winter; that is my experience last winter; outside of that you would get that water to your compressor.

Q. You know, Mr. Muir, that last winter was an exceptionally mild winter in this country?

A. I wouldn't say so by comparing the weather records. [1041—891]

Q. That is the first winter you have been in Alaska? A. Yes, sir.

Q. I believe last winter there were several times when the weather was zero, wasn't there?

A. The government records show here just one night when the weather was below zero here in Juneau.

Q. That is here in Juneau?

A. All right; take 6 degrees lower up above, and

(Testimony of Downie D. Muir, Jr.)

the coldest we had at the Ebner tunnel was 6 degrees below.

Q. This flume runs through a canyon where the north wind hits it—has a sweep at it all the way down, doesn't it, Mr. Muir?

A. I believe from my experience up there it is rather a protected spot; I spent some time on our flume last winter.

Q. Your flume is on the other side of the creek?

A. It is on the other side and gets the wind; your flume is away down in the canyon.

Q. You put a little 5-stamp mill up there, three or four hundred feet up the canyon where this grading is, haven't you, Mr. Muir?

A. Yes; on about the same level.

Q. You never expected to build a mill, Mr. Muir, of any size at the point where this grade is immediately below that slide, did you, Mr. Muir?

A. Before we determine what we are going to do we are going to run the 5-stamp mill, far enough so mineralogically we will know what we have there.

Q. You are first going to find out what kind of a mill you want, and then you will decide on where you are going to build it—is that right?

A. That is presumably the process to be followed.

Q. But you have no intention or no idea of building a mill [1042—892] immediately below that slide, have you?

A. I couldn't say, Mr. Hellenthal, whether we have any intention or not.

Q. You have examined that ground there, haven't

(Testimony of Downie D. Muir, Jr.)

you, Mr. Muir? A. The slide?

Q. Yes. A. Yes, sir.

Q. Examined that ground above that grade?

A. Yes.

Q. You know that is no place for a stamp mill or any size, don't you?

A. I am not so sure about that.

Q. However, your little mill is built up farther where it would be in a degree protected, isn't it?

A. Not for that reason at all; because we got additional head room; the lower part of our mill, 5-stamp mill I am speaking of now, is some 10 or 12 feet below the old mill grade to which you referred; we only had 22 feet between the tunnel and the creek, and we had to take up all of the head room we could get.

Q. Of course, if you build a mill on that grade, you would have to hoist your ore from the tunnel into the mill?

A. Not necessarily hoist the ore; we would probably have to have a device to hoist the ore from one machine to another.

Q. You would have to raise the ore from the portal of the tunnel to get it into the mill, wouldn't you?

A. No; the mill could be built so you could get it into the mill without raising it, but after you got it through the stamps it would probably have to be lifted to other machines for subsequent treatment.

[1043—893]

Q. If you build a mill there you expect to deliver the ore from the tunnel to the ore bins, wouldn't you?

(Testimony of Downie D. Muir, Jr.)

A. Well, sir, asking me what I would do, I would say no; I would cut that grade further down if I needed additional head room.

Q. You would change the grade and you would change the place also, would you not, Mr. Muir?

Q. I am not referring to that; I am answering the other question.

Q. I am also asking you now if you wouldn't change the place also?

A. It depends on the size of the mill that we were going to build.

Q. If you were going to build a mill of 100 or 200 stamps, would you build it at that place?

A. For safety that place is all right; the slide you are referring to is 250 feet further down.

Q. Have you ever examined that ground above that mill site? A. Yes, sir.

Q. That ground is ready to fall any time it gets a chance?

A. Ready to fall, no; it is pretty solid ground up there.

Q. Cracked wide open, isn't it?

A. I have never seen any cracks in it.

Q. Never made a very close examination of it have you?

A. Yes; I have been over that ground a good many times up there.

Q. Now, are you making a raise in the tunnel?

A. Yes; we are driving a raise.

Q. Where are you going to connect it?

A. We will connect with the old workings?

(Testimony of Downie D. Muir, Jr.)

Q. At what point?

A. Are you familiar with the old workings?

[1044—894]

Q. Somewhat?

A. Well, we will connect with them pretty well towards the east face of the lower tunnel.

Q. Towards the east face of the lower tunnel?

A. Yes; that is the one there at the Ebner mill.

Q. After you get that raise in you won't need these fans, will you?

A. Certainly will; we will need more than that after we get the raise through.

Q. Won't that raise ventilate your mine?

A. The raise will ventilate the tunnel and the raise itself, but as to the east and west drifts, which are mine drifts beyond the foot of the raise, it will have no effect on them in any way, so that will have to be ventilated by a fan as it is at present.

Q. Now, Mr. Muir, you calculated the size of the Ebner flume at about 3200 inches, didn't you?

A. Yes, sir.

Q. In making that calculation you are taking the flume as it now is? A. Exactly as it now is.

Q. You know there is one board that has been put up there recently, the top board about eight inches, isn't it?

A. Yes, a little higher than that; that was put up there sometime last fall.

Q. How high is that upper board?

A. Nine inches.

(Testimony of Downie D. Muir, Jr.)

Q. Taking that nine inches off of that flume what will it carry?

A. I cannot tell you until I figure it up.

Q. How high is that flume?

A. Three feet nine inches. [1045—895]

Q. Taking that nine inches off, approximately how much would it decrease the capacity of the flume?

A. It would decrease it, I should say, between 12 and 15 second feet.

Q. Decrease the size between 12 and 15 second feet? A. No; decrease the flow.

The COURT.—What percentage would it be, Mr. Muir; I understand you to say that the capacity of that flume now is 3200 miner's inches?

A. Yes, sir; that is only approximate.

The COURT.—About what percentage would that decrease the flow as measured in miner's inches of capacity? A. About 12 or 15 per cent.

Q. The upper nine inches carries much more water than any nine inches below it, does it not?

A. The center section, right through the middle of the flume, will carry the most water; yes; it would be about 20 per cent.

Q. Would the volume be decreased 20 per cent or the size of the flume itself?

A. No; we are speaking about flow now.

Q. Isn't it a fact that the upper nine inches carries very much more than any nine inches below that?

A. It will carry considerably more than the nine inches on the bottom of the flume; it will carry some

(Testimony of Downie D. Muir, Jr.)

more than the next nine inches; and it will carry very little more than the next nine.

Q. It will decrease the carrying capacity of the flume about one-third, will it not?

A. I cannot answer that question until I figure it carefully.

Q. Did you commence operations in driving the tunnel when you came here in August—the 21st of August? [1046—896]

A. I have got it pretty close—it won't decrease the flow of the flume one-third.

Q. How much will it decrease the flow of the flume, Mr. Muir?

A. Between 27 and 28 per cent; that is an approximate figure.

Q. Were the operations on the tunnel commenced just after the first of August, 1913?

A. Yes; the first work was done in the tunnel on the 21st day of August.

Q. 1913? A. 1913.

Q. That is when operations on the tunnel were commenced?

A. The operations on the face of the tunnel were commenced; the tunnel at that time was in 1173 feet.

Q. That is when operations on the tunnel were resumed? A. Yes.

Q. Up to that time the operations had been suspended for some time owing to various causes, hadn't they? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Testimony of Downie D. Muir, Jr.)

Redirect Examination.

(By Judge WINN.)

Q. Were you there when this last board was put on the height of the flume? A. Yes, sir.

Q. When was that, approximately?

A. I should say that was in the latter part of October, or the 1st of November, 1913.

Q. How is the original framework of the flume with reference to the putting on of this board—was the framework of the [1047—897] flume built for the purpose of putting this board on—the entire framework?

A. Yes; the framework of the flume was originally constructed for a 4-foot flume; for some reason which I don't know they only put three 12-inch boards on the sides.

Q. Then those upright pieces that the boards were nailed on right along the side of the flume extended up high enough to put this extra board on?

A. Yes, sir.

Q. And the flume was in that condition when you put the board on? A. Yes, sir.

Q. Now, I will ask you to look at Defendant's Exhibit "Z" in this case, and state if that part of the flume line which is exhibited on this photograph generally would show about the construction of the flume before you put that extra board on?

A. That is pretty hard to say, Judge; but I presume that is about the shape it was in.

Q. Well, do those upright pieces on which the boards are nailed—are they similar to the ones

(Testimony of Downie D. Muir, Jr.)

shown in this photograph?

A. Oh, yes; they show about a foot above the outside board.

Q. So you only put about nine inches on that board that was originally intended for those boards to be put on? A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Questions by the COURT.)

Q. Mr. Muir, before you put that board on, was there enough water in the flume in the summer-time to answer all your purposes—all your present purposes—were you getting enough water in the summer-time, taking the usual flow of Gold Creek in the summer-time, to drive your tunnel? [1048—898]

A. We had; yes, sir.

Q. Were you getting enough water in the winter-time up to the time that the water ceased entirely—that is, in January, did you get enough water?

A. Not exactly, Judge, because before the shut-down I had to take one side off.

Q. What did you put the extra plank on the flume for—it didn't increase your capacity and you had all the water you wanted when you could get any water at all, and when the water was low the addition of the plank—the extra height—didn't increase your flow, did it?

A. I was endeavoring to fix the flume in such shape that I would have as little trouble as possible with freezing water during the winter, so I put a top on and put the side board on, and made the flume

(Testimony of Downie D. Muir, Jr.)

as high as possible, as well as taking the flume to its originally intended cross section, in expectation of our intended requirements.

Q. Do I understand before you put that 9-inch plank there on the top, that your flume was not covered over?

A. No; there was no covering on the flume at all; it was an open flume 4 feet wide and 3 feet high.

Q. Is the flume now covered the entire distance?

A. Yes, sir.

The COURT.—That is all.

(Questions by Judge WINN.)

Q. Just a moment, Mr. Muir—as I understand, then, this work that was done as you have testified to in answer to Judge Jennings's questions, was a matter of building the flume as it was originally intended to be built?

(Not answered because of objections.)

Q. What was that done for, Mr. Muir—that extra work that you put on there covering the flume?
[1049—899]

A. Why, it was put on in expectation of carrying the full quantity of water that the flume was originally intended for, and what the flume was originally intended for was easily shown by the construction of the upright posts, which went a foot above the side board and showed clearly that whoever designed it designed it for a 4x4 flume, but when I came here it was a 3x4 flume.

Q. No covering on it?

A. No covering on it; the covering, as I say, was

(Testimony of Downie D. Muir, Jr.)

put on in the cold weather.

Q. I will ask you if, in the construction of flumes in this country or any other place, it is a part of the construction of the flume to cover it?

A. Depends entirely on the country; in this country where you have lots of snow and cold weather, and this flume being located on the side of the hill where there is liable to be snow slides come down, it is necessary to cover it; in southern countries—

Q. Is the Alaska-Juneau flume just on the opposite side of the creek covered?

A. The flume from the intake to the tunnel—Gold Creek tunnel, has either one or two boards on top of it; I should say that 75 per cent of the top area of the flume is covered.

Judge WINN.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. You covered it because you wanted to protect yourself against anchor ice?

A. Anchor ice and snow.

Q. You have anchor ice in that flume during a part of the winter season?

A. Yes, sir. [1050—900]

Q. And it retards the flow of your flume?

A. Yes; when the anchor ice gets so high it goes over the 9-inch board, the water is away over the flume.

Q. You didn't build your flume clear to the top of the uprights that you found there, did you?

(Testimony of Downie D. Muir, Jr.)

A. No, sir; for the reason that I wanted to put a top on and I wanted to do it as economically as possible.

Q. And the work you did in driving that little tunnel on your property, the actual work of some four thousand feet cost you over \$200,000.00—is that right? A. I made no such statement.

Q. How much work did you do, Mr. Muir?

A. About 4,400 feet.

Q. How much did that cost you?

A. That is the first time you have asked me that question?

Q. Judge Winn asked you something about that?

A. Judge Winn asked me how much had been spent on the property, or expended on the property, and I answered \$226,000.00.

Q. How much work did you do besides running the 4,400 feet?

A. I am going to tell you what money was spent on the property if you will wait a minute.

(Whereupon Court adjourned until 10 o'clock tomorrow morning.) [1051—901]

MORNING SESSION,

August 5, 1914, 10 A. M.

D. D. MUIR, Jr., the witness-stand.

Judge WINN.—Mr. Hellenthal had a question pending to the witness.

Mr. HELLENTHAL.—Oh, I don't care about it.

Direct Examination.

(By Judge WINN.)

Q. The question, Mr. Muir, that Mr. Hellenthal

(Testimony of Downie D. Muir, Jr.)

had propounded to you and you hadn't answered it, I will ask you to answer it; you were stating, I believe, how much money had passed through your hands or had been disbursed by the Company you represent in the opening up and development of the Ebner property; if you have those figures I wish you would briefly state what they were, and make such application of that amount as you may be able to the items and things for which it was paid.

A. Since operations started on August 21st, 1913, approximately \$131,000.00 has been expended in labor and equipment and supplies on the tunnel to date.

Q. What was the remaining part of the \$226,000.00 for?

A. That I am not informed of; the property was sold at a mortgage sale, and the receivers dismissed, and I would presume a portion of it went in to settle up the indebtedness against the property.

Q. What connection did you say your company had with this United States Mining, Smelting, Refining & Exploration Company?

A. United States Mining, Smelting, Refining & Exploration Company; we hold an option on the Ebner property from the Chapman Committee of New York or Boston, which purchased the property at the foreclosure sale this spring.

Q. They foreclosed on the stock of the Ebner Company and not on [1052—902] the physical property?

A. Well, I cannot say as to that; I don't know.

(Testimony of Downie D. Muir, Jr.)

Q. Now, you stated something to me since you left the witness-stand about you hadn't figured as accurately on the witness-stand as you might have done as to how much the taking off of that 9-inch board at the top of the flume would decrease the capacity of the flume—have you made a better computation of that since you left the witness-stand?

A. Yes; my answer yesterday was only an estimate in reply to Mr. Hellenthal's question, and in figuring out the decrease of percentage in the carrying capacity of the flume if the 9-inch board were taken off the top, would amount to between 20 and 22 per cent.

Q. Have you calculated approximately the carrying capacity of the present Alaska Light and Power Company's flume?

A. No; I have made no calculations of that; the size of that flume, the Alaska Light flume, is 4x4, and the grade, I believe, is 47/100; that is considerably in excess of the grade of the Ebner flume, consequently the carrying capacity of the Alaska Light flume would be considerably greater than the capacity of the Ebner flume; I should say considerably over 4,000 miner's inches.

Q. Now, I will ask you, Mr. Muir, should the Alaska-Juneau Company take from their dam all the water of Gold Creek at any season of the year and convey it to the mill down at the beach, whether or not there would be any water at the intake of the Alaska Light Company's flume?

A. Why, at the lowest stage of water during the

(Testimony of Downie D. Muir, Jr.)

year, if the Ebner take no water at all out of the intake, and all of the water was taken out by the Alaska-Juneau Company at their intake and taken in their flume and carried to the mill site down here, there would be no water at the intake of the light Company's [1053—903] flume other than a small portion that might in the warm portions of the day run out of the gulches below the Alaska-Juneau intake and above the Alaska Light intake.

Q. You marked on Defendant's Exhibit "S" yesterday, I believe, where the Ebner Gold Mining Company returns the water to Gold Creek after it is used at the 5-stamp mill and at the new air-compressor, and that place you marked is on the Cape Horn No. 2 lode claim, is it? A. Yes, sir.

Q. And that is returned at a point above the Alaska Electric Light Company's intake?

A. Yes, sir.

Judge WINN.—Now, I desire to ask Mr. Muir a question in the way of a direct question that I overlooked when Mr. Muir was on the witness-stand.

The COURT,—You ask him this question as a recall,

Judge WINN.—Yes.

Q. I will ask you if you have been on the Ebner property a good deal since you came here and took charge of the work up there?

A. I have; yes, sir.

Q. I will ask you as to whether or not you have ever taken notice of any brushed-out or any visible line on the lower side line of the Lotta claim?

(Testimony of Downie D. Muir, Jr.)

A. Yes; that line is visible to-day from the Perseverance road, and from a point further down the road the end line of the Lotta, and Taku is also visible.

Q. I will ask you can that be easily or otherwise seen by anyone going along the road?

A. If a person were to stop and look across the gulch they could undoubtedly see that there *that* been some brush cut out there, and looks as though there were a straight trail going across, [1054—904] that would be the southwesterly side line of the Lotta.

Q. Over what length of time have you observed this cut-out portion that you have just testified concerning, Mr. Muir? A. For about a year's time.

Judge WINN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Muir, how many times have you brushed out the lower side line of the Lotta since you were here?

A. It has not been brushed out since I was here.

Q. Do you mean to tell this Court, Mr. Muir, that you have been here almost a year and during that time you have not had that line brushed out at least once?

A. No, sir; that line has not been brushed out since I have been here.

Q. Now, just a question about that Alaska Electric Light business; the Alaska-Juneau people use the water at the Snow Slide gulch compressor and

(Testimony of Downie D. Muir, Jr.)

they put it back into the creek before it gets to the Alaska Light and Power Company's intake, don't they?

A. The water that is used on the compressor will go back into the creek above the Alaska Light intake; yes.

Q. The Alaska Light Company has about the same elevation that your Company has?

A. Approximately.

Q. And will go back into the creek at the same place? A. A little above.

Q. Then the Alaska Light and Power Company would not be inconvenienced, would it?

A. Not through that amount of water, but that amount of water [1055—905] is a very small quantity compared with what your flume will carry.

Q. You figure on putting a 200-stamp mill somewhere in the vicinity of Shady Bend, Mr. Muir, I understand?

A. I haven't so testified; no, sir.

Q. You don't figure on putting such a stamp mill up there?

A. In answer to that question, Mr. Hellenthal, I will say that we have not gone far enough with our experimental mill to determine what process we have got to install, and until such time as that is thoroughly determined we won't figure on a mill. I suppose after that is determined they will know what they are going to do.

Q. You don't know anything about erecting a mill at the present time?

(Testimony of Downie D. Muir, Jr.)

A. I haven't considered it; no, sir.

Q. You have no plans of erecting a milling plant at Shady Bend, then, at the present time—is that right?

A. No. As I say, we haven't gone far enough to determine on a plant at any point.

Q. If you were to put a milling plant at Shady Bend you would have to put the tailings in the creek, wouldn't you?

A. We would, probably, in that case flume the tailings.

Q. Flume the tailings? A. Yes, sir.

Q. Where to?

A. Probably put them in the channel down here like you people are doing.

Q. You would flume your tailings all the way from that mill site clear to the channel?

A. That distance would be less than a mile and a quarter.

Q. You know that is not practical, don't you, Mr. Muir.

A. I know it is practical—immensely practical.
[1056—906]

Q. You would have to have at least 4 tons of water to one ton of tailings, wouldn't you, Mr. Muir?

A. We have got a fall up there from the mill site to the beach here of about 345 feet, and if we, as I understand you people are figuring on doing, use 18 tons of water per ton of ore milled, we will have sufficient water to carry our tailings down.

(Testimony of Downie D. Muir, Jr.)

Q. However, in order to do that you would carry the water and the tailings up above the Electric Light and Power Company's intake, wouldn't you?

A. We would put in a flume that would carry them past the Electric Light Company's flume.

Q. The Electric Light and Power Company, however, in order to use that water would have to have it pumped back to their intake, wouldn't they?

A. Oh, no; not at all; it is above the ridge there.

Q. If you carry the tailings to the beach, you would dump the water in the channel, wouldn't you?

A. We could flume the tailings, Mr. Hellenthal, over the basin there to prevent the silt settling there and stopping the water supply.

Q. But the answer you made was that you intend to flume the tailings to the beach.

A. Isn't that fluming them to the beach, if we dump the tailings at the intake of the Alaska Light Company's flume?

Q. You don't intend to flume them to the beach but to the intake of the Alaska Light Company's flume, is that right?

A. I am stating to you assumptions pure and simple.

Q. If you took the tailings beyond the intake of the Alaska Light and Power Company you would have to carry the water beyond the intake, wouldn't you? A. Yes. [1057—907]

Q. And if you dump the tailings above the intake of the Light Company the tailings would pollute the

(Testimony of Downie D. Muir, Jr.)

water of the Alaska Light and Power Company, would they not?

A. Well, the proportion of water in the creek—the proportion of water that would go with our tailings, the tailings would be in small proportion; it would be pretty nearly pulp before they got that far.

Q. They would, however, destroy the use of the water for the Light Company for their plant, wouldn't they?

A. No; the tailings that would go from our mill would be nearly pulp. I will admit it might give them some worry.

Q. It would injure the plant—not exactly destroy it, but injure it?

A. The injury would be to the —— alone.

Q. In the winter time what would be the proportion of water and tailings in the creek below the Alaska Light and Power Company's intake?

A. We would probably be in the same shape you are yourself—we would be shut down.

Q. If you were using the water, what would be the proportion?

A. Well, at the low stage of water we would be using all the water we could get, which would be all the water in Gold Creek.

Q. There would be more tailings than there would be water? A. Yes.

Q. Now, if those tailings went down there and were dumped above the Alaska Light and Power Company's flume, you know they could not use this water, don't you?

(Testimony of Downie D. Muir, Jr.)

A. It would be a case of putting in settling boxes—settling tanks; there would be nothing only a very fine pulp.

Q. On whose ground would the sand settle?

A. I don't know who owns that ground. [1058—908]

Q. You said about \$150,000, or a little less than \$150,000, I think, was spent on the driving of the tunnel and other like work in the Ebner mine?

A. I said \$141,000, Mr. Hellenthal; that was on labor, supplies and equipment.

Q. In connection with the development of the mine?

A. In connection with the development of the mine.

Q. Such as driving tunnels and drifts, making up-raises and work of that character?

A. Buying supplies and equipment—for that purpose, yes.

Q. And the other was spent in straightening out titles, and things of that character?

A. I said I didn't know, Mr. Hellenthal. That amount I testified to was what has been spent since I have been on the property.

Q. That wasn't spent, then, in any part of the development of any of the Ebner property?

A. Not so far as I know.

Mr. HELLENTHAL.—That's all.

The COURT.—Mr. Muir, I don't know whether I asked you the question or not. I wish to be informed how much water, measured in miner's inches,

(Testimony of Downie D. Muir, Jr.)

taken at the Ebner dam where you take it now—how much water is necessary to drive the tunnel that you are now driving, and operate the sampling mill that you now have on the ground.

A. In answering that question I will have to give a little explanation, if I may, Judge. For instance, when we started in here we were running but three drills and the fan. Now, as against that, we are running from 7 to 11 drills, 2 fans, one water wheel on the mill, a water wheel on the generator, and a water wheel on the air-compressor, so where our power consumption was probable 250 horse at the start, it is now [1059—909] between 450 and 500 horse actual consumption. Now, in miner's inches, if I can answer that question a few minutes later—it will take some figuring to figure it out.

The COURT.—What I want to know is how much are you using now, and I want to know whether or not the consumption of water for power requirements for the work that you are doing is on the increase or the decrease?

A. Well, it is on the increase.

The COURT.—Well, if it is on the increase, then I want to know to what maximum it is probable it will reach. In other words, Mr. Muir, I want to get in my mind an idea of how much water power you require outside of the fact of your ultimate requirements when you get a 200-stamp mill or whatever stamp mill you might erect for the Ebner operations and your work; I want to know how much water power you are using and how much water power you

(Testimony of Downie D. Muir, Jr.)

will need to develop this property until you have arrived at a conclusion where to put your mill?

A. I can give you those figures in a very few minutes.

The COURT.—Very well.

(WITNESS EXCUSED.) [1060—910]

The defendant to further maintain the issues on its part, recalled as a witness, F. J. WETTRICK, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant
(Recalled).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Wettrick, Judge Jennings, I think, asked you a question the other day and I don't think you answered it, and I will ask you since you left the witness-stand, have you made a sufficient examination to ascertain whether or not the Lotta lode claim as it is located on Defendant's Exhibit "S" is the location of it as described in Judge Cushman's decision—now, any explanation you have to give on that, explain fully to the Court?

A. I made an examination of that, and as the result of that examination I prepared a plat which follows the description given in the judgment or decree of Judge Cushman.

Q. Now, I will first, Mr. Wettrick, read you the description of that claim as we sued for it and as

(Testimony of F. J. Wettrick.)

described in our complaint in the case in which Judge Cushman rendered his decision.

(Objection and the description not read.)

The COURT.—What I want to know of Mr. Wettrick is whether or not the Lotta lode claim as it appears on exhibit “S” was platted from the field notes or from Judge Cushman’s decision, and if it was not platted from that, then please plat it from that on tracing paper so that it can be superimposed on Defendant’s Exhibit “S”—that is what I want, I don’t care [1061—911] what you claim.

Q. Now, Mr. Wettrick, you understand the Court’s position so you explain those matters to the Court?

A. The map which I presented here of the Lotta, as I stated before, was platted according to the description of the judgment and decree of Judge Cushman, the lower side line of the Lotta being the line marking corners 5 and 6 as per that description in exactly the same position as it has been on every exhibit in all the Basin cases we have introduced; the position of No. 5 which is the most southerly corner of the claim and nearest the cabin, is tied to the cabin in the description given in the judgment and decree of Judge Cushman, and it therefore fixes absolutely the description of corner No. 5 of the Lotta; corner No. 5 of the Lotta is exactly in the same position now as it was in in 1908; the course of the lower side line of the Lotta, instead of adopting the course given in the patent notes, the course is as it is delineated upon this map, namely N. 31° 36’ W.

Q. Well, what will that do with reference to any

(Testimony of F. J. Wettrick.)

of the other posts—for instance, corner No. 6, and the post that is on the side line of the Lotta lode claim as shown on Defendant's Exhibit "S"?

A. And following that course from corner No. 5 it leads you to the position of the actual corner No. 6 of the Lotta, and passing from the witness corner, which has been referred to in my testimony heretofore—that is to say, the lower side line of the Lotta according to its actual position on the ground, which this exhibit "S" delineates, is exactly the same as the description gives it in the judgment and decree rendered by Judge Cushman; the [1062—912] difference in the course is this—instead of adopting the course of N. 33—35, with a 30 degree variation as given in the patent notes, we adopted the course as we found it by actual observation, N. 31—36 W. and with a 32 degree variation; the difference in the variation being about the same as the difference in the location.

Q. If you take the course that is given in the patent and the variation in the patent, what effect, if any, would that have upon the claim as it is located on Defendant's Exhibit "S"?

A. That would put it in almost the identical position as the course of 31—36 would, with 32 degree variation.

Q. Now, I understand that in Judge Cushman's decision he followed what course and what variation?

A. The course and variation as determined by his decree and checked by the Alaska-Juneau engineers as being the present true course, N. 31—36 W.

(Testimony of F. J. Wettrick.)

Q. But if you take the other course and distances with the variation that is given in the field-notes you say it would practically put it in the same place?

A. It would.

Q. Now, I will ask you, Mr. Wettrick, if you testified in that Basin case before Judge Cushman?

A. I did.

Q. I will ask you if the corner posts that you have testified to in this case on the lines of the Lotta are the same corner posts and in the same places that you testified concerning before Judge Cushman?

A. The corner post 5—

(Question objected to and reframed.) [1063—913]

Q. I will ask you at the time of the trial of the case before Judge Cushman where were those corner posts with reference to where they are now and where they were just prior to August 1st, 1910?

A. The same place.

The COURT.—What I was trying to get done was this: Judge Cushman's decision says that the Ebner Gold Mining Company, or the plaintiff in that suit is entitled to, and is the owner of a certain lode mining claim called the Lotta, which said lode mining claim is particularly described as staked upon the ground, and more particularly described as follows, to wit: "Beginning at corner No. 1 of the Lotta lode claim"—Now, do you know where corner No. 1 of the Lotta lode claim patented is? A. Yes, sir.

The COURT.—Have you got that on this tracing that you have now in your hands? A. Yes, sir.

(Testimony of F. J. Wettrick.)

The COURT.—State whether that is in the same place that you have represented it to be on Defendant's Exhibit "S"?

A. It is not exactly in the same place as it is represented on this exhibit—that is to say, the distance from 6 to 1 on this exhibit is a few feet shorter than that given in that description.

The COURT.—Can you, on exhibit "S," locate where the corner No. 1 of the Lotta patented is?

A. Yes, sir.

The COURT.—Well, I wish you would do that, and then superimpose your tracing over that. Now, locate on your tracing where corner No. 1 of the Lotta lode claim patented would be, and mark it on Defendant's Exhibit "S" as "A-1." [1064—914]

(Witness does so.)

The COURT.—Now, superimpose the tracing that you have placed the corner No. 1 of the Lotta lode claim patented, as you have traced it on your tracing—superimpose that on the point that you have just marked on Defendant's Exhibit "S," "A-1,"—now, doing that, does the rest of the Lotta lode claim fit over the Lotta lode claim as you have marked it on Defendant's Exhibit "S"?

A. Not all of it, no.

The COURT.—Superimpose your tracing which you hold in your hand on Defendant's Exhibit "S,"—how does the lower side line of the Lotta lode claim, as described in the decree of Judge Cushman compare with the lower side line of the Lotta lode claim platted on Defendant's Exhibit "S"?

(Testimony of F. J. Wettrick.)

A. It is exactly the same position except that on the exhibit "S" it is 26 feet longer than in the decree of Judge Cushman; otherwise it is exactly the same.

The COURT.—Now, on exhibit "S" you have traced there the location of the dam of the plaintiff company? A. Yes, sir.

The COURT.—That dam as you have located it on exhibit "S" is all below the Lotta lode claim, is it not?

A. It is not all below; at the end of the timbers, there is a projection of the timbers over the line a very short distance about three feet in length, one and a half to two feet in width.

Q. Where is the intake.

A. The intake is below the line as indicated just below the letter "D".

Q. Between corners 5 and 6 of the Lotta lode claim there is a place marked "Alaska-Juneau Dam," and you have a black heavy [1065—915] shaded space entirely below the line of the Lotta lode claim; does that or does that not correctly represent the Alaska-Juneau dam?

A. That represents the dam correctly; the width of the line—the scale being 200 feet, the width of the line is probably just a little wider than the scale. It would be difficult to show the projections, only being a foot or two, crossing the Lotta there because the width of the line—the scale is so small that it does not admit of showing the one and a half foot or so that projects on the Lotta.

(Testimony of F. J. Wettrick.)

Q. I understand you to say that the intake of the dam is below the Lotta lode claim? A. It is.

Q. And one or two of the timbers of the dam project on to the Lotta lode claim?

A. About two and a half or three feet of the timbers project, making a width of about one and one-quarter or one and one-half feet; the timbers running diagonally over the creek, and it is those timbers that run over the line of the Lotta.

Q. And all the rest of the timbers of the dam are below the Lotta?

The COURT.—The dam is itself?

A. Well, the riprap and the silt may project over the line of the Lotta; because of the grade with that kind of material, and the dam being so close to the line may project over.

Q. That is the case in all dams, isn't it?

A. Yes, sir.

The COURT.—Silt is bound to accumulate; if the dam was 20 feet below the line there would be some silt accumulated?

A. Yes, sir; as I say I am speaking of the timbers I actually saw; I didn't dig down to see if there were any other timbers at all.

The COURT.—That is what I want to know,—if the position of that [1066—916] lode claim as Judge Cushman decided it and as shown on exhibit "S"—about how it compares?

A. The lower side line is exactly the same.

The COURT.—Just mark that tracing "Tracing

(Testimony of F. J. Wettrick.)

of Lotta Lode Claim according to Judge Cushman's decision."

(Witness does so.)

The COURT.—No, have you put a scale on there?

A. The scale is on; yes, sir.

The COURT.—And the directions?

A. Yes, sir.

(Whereupon said tracing was received in evidence and marked Defendant's Exhibit "E-1").

Q. (By Judge WINN.) The Alaska-Juneau dam, is it or is it not on Defendant's Exhibit "S" in the same position as it was before Judge Cushman rendered his decision?

A. No; not quite.

Q. Well, you testified on that question in this case, didn't you, heretofore—Mr. Hellenthal cross-examined you and I redirected you?

A. I think so; yes.

Q. Do you remember what the difference is in the position of the dam as it was before he rendered his decision and the position of it now?

A. No; not the actual number of feet.

Q. You did give it in evidence in this case, didn't you?

A. I don't remember if I did; if I did I must have looked up my note-book.

Q. I will ask you to look up your note-book and get that and give me the exact position that dam was in, and I will recall you on that?

A. The actual position of it is found in one of the exhibits [1067—917] introduced in this case.

(Testimony of F. J. Wettrick.)

Q. I will ask you, Mr. Wettrick, what this is a photograph of, and I refer to exhibit "F-1" for identification?

A. A photograph showing the Ebner dam, intake of the new Ebner flume, and a portion of that new high-line flume, and the wagon-road leading from Juneau to Perserverance mine.

Q. Which has been referred to frequently here as the Basin road? A. As the Basin road.

Q. Now, does it show anything up on the dam?

A. It shows a post right alongside of the intake upon which a notice of location was posted.

Q. Did you see the location notice that was posted on that post? A. Yes; I believe I did.

Q. Is that the one that was posted by Mr. Tripp or the one that was posted by myself as agent for the Ebner Gold Mining Company?

A. It was the latter; the Tripp notice was over on the other side of the creek.

Judge WINN.—I will offer this exhibit in evidence, may it please the Court, and I will question him a little more about it.

The COURT.—Was the time fixed? You submitted the photograph to him and asked him what it was a photograph of, and you asked him about a notice; you asked him whether that was the notice you posted or the notice that Mr. Tripp posted, and I want to know what time he is testifying to about the notice.

Judge WINN.—I expected to take him over that after I got the photograph in evidence.

(Testimony of F. J. Wettrick.)

Mr. HELLENTHAL.—No objections to the exhibit.

(Whereupon said photograph was received in evidence and marked [1068—918] Defendant's Exhibit "F-1.")

Q. Do you remember about what time it was that you saw that notice there, Mr. Wettrick, on this post near the present intake of the new Ebner flume?

A. No, I don't; I was up there but I don't know exactly what time I saw it there, or what particular time I did see it.

Q. Was it before October 3d, 1910?

A. I should say it was; my impression is it was, because I was up there frequently before that time, up around that part of the work.

Q. Now, Mr. Wettrick, I wish you would take this photograph, and as you have already spoken about the Basin road I will ask you from what portion of the Basin road as indicated on this photograph can the Ebner dam and this notice you are speaking of be seen?

A. That notice can be seen from almost any point along the road from beginning at a point a little above the road leading off to the Ebner mill up to the dam, a distance of about 900 or 1000 feet or more.

Q. The intake shown on there, did you state that that was the intake of the old Ebner flume or the new Ebner flume that was built by Mr. Mackay?

A. I said that was the intake of the new Ebner flume.

Q. Did you see the Tripp notice while it was posted

(Testimony of F. J. Wettrick.)

up? A. I didn't see the paper, no.

Q. What did you see?

A. I saw the post that was pointed out to me that the notice was posted on.

Q. Is that visible in this photograph?

A. That same post, I think, is shown on this photograph. [1069—919]

Q. On what portion of the photograph?

A. On the extreme left hand of it.

Judge WINN.—That is all, your Honor, except to recall him on the matter I indicated a while ago.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wettrick, the part of the dam that projected over the Lotta line at the time this case was tried before Judge Cushman was the upper end opposite the intake, was it not?

A. The upper end opposite the intake.

Q. That is the end on the opposite side of the creek from where the intake is? A. Yes, sir.

Q. The end on the side of the creek where the intake is did not project over the line?

A. I don't believe it did, no; I don't remember whether it did or not.

Q. Well, the intake of the Alaska-Juneau people, that is just the same now as it was before that decision—that has never been changed, has it?

A. I don't believe it has; it looks the same to me.

Q. That was always below the lower side line of the Lotta? A. The intake was; yes.

Q. And the only thing that was over the line was a

(Testimony of F. J. Wettrick.)

piece of the dam? A. The timbers of the dam.

Q. That has been changed since that decision was rendered, hasn't it? A. It has.

Q. It hasn't changed the position of the dam in the creek any, [1070—920] has it?

A. It seems to have, yes, by swinging the timbers around from upstream downstream, it turned the other end of the timbers up to the extent that I have indicated.

Q. What extent?

A. To the extent of about a foot and a half above the line in lateral distance, and about three feet along the length of the timbers.

Q. That is the same place—on the same side of the creek where that extends over the line?

A. That is somewhat near the middle, not quite, a little east of the middle of the creek.

Q. A little east of the middle of the creek?

A. Yes; the intake being at the extreme easterly side of the creek, the dam of course does not come across the intake because that would close it up.

Q. That is about a foot over the line of the Lotta at its widest place, you think now?

A. In that neighborhood.

Q. Did you measure that by actual survey or are you just estimating, Mr. Wettrick, from an observation.

A. No, sir; I ran the line down there, an actual survey.

Q. When did you run those lines?

A. A week ago last Sunday.

(Testimony of F. J. Wettrick.)

Q. Who was with you?

A. Mr. Wilhelm and Mr. Malotte.

Q. How long did it take you to run it?

A. Oh, I don't know; I don't know whether it was Sunday or not, it was in the morning, I don't believe it was Sunday; it took us about two hours, I think.

Q. Did you go down the creek and actually measure the distance? [1071—921]

A. I went down the creek and found where the line hit, and then from there I estimated the distance.

Q. You didn't measure it?

A. You mean the distance the timbers projected over?

Q. Yes.

A. That distance I didn't measure; I saw where the line fell upon the timbers, and being within a few feet of it I could very easily estimate it.

Q. You took what you thought was an observation over the line and then estimated the distance you thought this timber projected over the line?

A. No; not the distance I thought, but the distance I saw.

Q. That is all the surveying you did to determine that line?

A. I relocated the side line of the Lotta by actual transit work and saw where the lines projected there hit the dam.

Q. Did you follow the line from one post to the other? A. Yes, sir.

Q. Actually over the ground?

A. Yes, sir; I did.

(Testimony of F. J. Wettrick.)

Q. Went down in the bottom of the creek to determine the exact location of the line in the bottom of the creek?

A. I went down to the bottom of the creek.

Q. How did you do that?

A. Slid down there, with some difficulty.

Q. That is the reason you surveyed that line, isn't it? A. Not to run down into the creek.

Q. It is an exceedingly difficult place to get up and down, isn't it?

A. It is pretty difficult right there.

Q. You didn't wade the creek, did you, Mr. Wettrick?

A. Oh, I waded it to some extent, didn't wade across.

(WITNESS EXCUSED.) [1072—922]

ANGUS MACKAY, upon being recalled as a witness on behalf of the defendant, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Testimony of Angus Mackay, for Defendant
(Recalled).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Mackay, you heard some testimony here,— I don't know but what your attention was directed to it before, but to be sure of it I will ask you a few questions so as to have it in the record. You heard the testimony of Mr. Muir concerning putting on another board, of the width of 9 inches, on the new Ebner flume, did you? A. I did.

(Testimony of Angus Mackay.)

Q. You are the party that had control and supervision over the construction of that flume in the first place? A. Yes, sir.

Q. Do you know approximately when this 9-inch board was put on that Mr. Muir testified concerning?

A. It was in the fall of 1913.

Q. I will ask you if the upright pieces and the frame of the flume were originally framed for the purpose of putting on another board?

A. Yes, I left it with the intention of making it a 4x4 flume, and the uprights were all made for that purpose.

Q. Clear from the dam down to the Cape Horn all the flume line was constructed that way?

A. Yes, sir.

Q. I will ask you what was the reason that that board was not put on in 1910?

A. Well, it was getting pretty late—we were delayed for lumber—and it was rather late in the fall before we made a start to get the lumber on the ground to carry on the work. [1073—923]

Q. I will ask you if the Alaska-Juneau Company interposed any obstacles in the way of your getting a sufficient amount of lumber in 1910 to carry on your work? A. They did.

Q. What did they do in that regard?

A. Well, I had the lumber all ordered and it was from the George James sawmill on Douglas Island; it was all piled up there—that is, what I required, and the Treadwell Company came along and told

(Testimony of Angus Mackay.)

them they had to give that up; the foreman said he had engaged it, and they said it didn't make any difference.

Q. Did they get the lumber or did you get the lumber?

A. I didn't get it; had to get it from other places.

Q. Now, Mr. Mackay, I believe you stated that you had to close down the work on this mining property looking towards the opening up and developing which has since been carried on—this closing down was sometime in October of what year? A. 1911.

Q. Now, from that time on until sometime in May, 1913, what, if anything, did you do upon this Ebner property—I mean up to the next work that you did looking towards the carrying out and furthering this plan of opening up the property?

A. Well, there wasn't much of anything done, except seeing that the assessment work was done, was about all the money I could get from the east at that time.

Q. What was the cause, Mr. Mackay, of the hanging up of this proposition for that length of time?

A. It was pretty hard to raise money back there, we found out; so much litigation was brought against the company, and jumping of the claims, and it was pretty well known in New York, where they were getting the money.

Q. Who was it that was causing this disturbance of the Ebner Company?

A. The Alaska-Juneau people, I presume. [1074—924]

(Testimony of Angus Mackay.)

Q. Now, Mr. Mackay, you were upon this property, and in charge of it, and have been in charge of it since sometime in August or September, 1910, have you not? A. Yes; most of the time.

Q. I will ask you if during that time, since 1910, that lower side line of the Lotta has ever been brushed out, only in 1910? A. Not since 1910.

Q. I will ask you if that line now and ever since 1910, can or cannot be seen from the Basin road that runs up the creek on the other side?

A. Looking across from the Basin road the line is very plain; a trail has been cut through there.

Q. Now, Mr. Mackay, in addition to the money that Mr. Muir has expended or has disbursed in the way of opening up this property, how much money have you disbursed? A. Approximately \$85,000.00.

Q. And in addition to that there has been some disbursement of money through the hands of Mr. George R. Noble? A. Yes, sir.

Q. That amount you don't know? A. I do not.
Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That money, Mr. Mackay, went to the driving of that tunnel and matters of that kind, developing the property?

A. Driving the tunnel, construction of the flume, general supplies, and so on.

Q. It went towards the development of the property in general? A. Yes, sir.

Q. You took charge in 1910, did you, Mr. Mackay?

(Testimony of Angus Mackay.)

A. Yes, sir; I was acting superintendent. [1075—925]

Q. The flume, you say, you intended to construct to the height that it is now?

A. Eventually, yes; 4 feet.

Q. And you put the timbers up, you say, in 1910 sufficiently large and sufficiently high to allow the addition of this 9-inch board?

A. Yes, and eventually to carry it up to 4 feet.

Q. It was your intention to eventually make it that high? A. Yes, sir.

Q. But the board wasn't put on until this fall?

A. No.

Q. The flume was constructed by you in 1910 and completed in the month of December of that year, wasn't it, Mr. Mackay?

A. Pretty much all, except—

Q. Except that 9-inch board?

A. The penstock wasn't completed.

Q. There was no penstock put in there in 1910—I am speaking about the flume itself.

A. About completed in 1910.

Q. Not quite completed?

A. Not quite; the connections to the penstock were not made.

Q. The penstock was put in and the connections made in 1913?

A. No, the penstock was put in in 1911.

Q. What month of the year?

A. The month of January.

Q. And then you did no more work on the flume

(Testimony of Angus Mackay.)

until you put on this 9-inch board in the fall of 1913?

A. Yes, we done some work on it before that; there was part of the trestle work carried away and we repaired that before we started on the other.

Q. Part of the trestle had been carried out?

A. Yes; with a slide, probably.

Q. And then when did you do that work, Mr. Mackay? A. 1913. [1076—926]

Q. What part of the year? A. The summer.

Q. Sometime in the summer of 1913 you repaired that? A. Yes.

Q. Let's see if I have this right,—you built the flume, at least partially completed it in the fall of 1910—is that right? A. That is right.

Q. Then in January of 1911 you did some more work on the flume, and at that time built the penstock and completed it except that you didn't put on the 9-inch board?

A. The connections were made with the penstock.

Q. That completed it, then, except that 9-inch board, didn't it?

A. No; we covered the flume all over.

Q. Covered the flume, too, and with the exception of the 9-inch board and the cover on the flume, you completed it in January, 1911, is that right?

A. 1911?

Q. Yes.

Q. Well, we put in headgates and so on.

Q. When did you put those in?

A. Last year.

Q. You put in everything except the headgates,

(Testimony of Angus Mackay.)

the cover on the flume and the 9-inch board by January, 1911? A. Yes, sir.

Q. Then you did no more on the flume until the summer of 1913, when you repaired a place that had either been washed out or broken out by slides—that is right, isn't it? A. I think it is.

Q. Then the summer of 1913 you fixed up the flume where part of it had slid out?

A. The trestle work had given way.

Q. And in that same summer a little later on, you put on the 9-inch board—later in the fall of 1913—that is right, [1077—927] isn't it?

A. That is right.

Q. And put the cover on the flume—that is right, isn't it? A. That is right.

Q. You drove part of the tunnel in the mine in 1911, didn't you?

A. Started in 1910, and shut down about October, 1911.

Q. Shut down on the tunnel in October, 1911?

A. Somewhere around there.

Q. What time did you resume work on the tunnel?

A. August, 1913.

Q. Between the time that you shut down on the tunnel in 1911 to the time that you started in August, 1913, there was no work done on the property except doing the assessment work, is that right?

A. That is all.

Q. That was all the work that was done on the property all those years except the work you have testified to—there was no other work done on the property?

(Testimony of Angus Mackay.)

A. I think that is about all, as far as I can remember.

Q. And that matter that you spoke of about the James people, you don't know what the Alaska-Juneau had to do with James, or anything else—you were not present?

A. I know pretty well what happened.

Q. You were not present?

A. I had the word of Mr. James; he is a very truthful man; I have known him for many years.

Q. You don't know anything about these things except what you were told?

A. I know I couldn't get the lumber that was sawed over there; I had no reason to doubt his word.

Q. That was what time in the fall?

A. I think that happened while you were down in Ketchikan.

Q. What month? [1078—928]

A. In November, I think; I wouldn't be certain.

Q. In November, 1910, you say you wanted to buy some lumber from James, and you say the Alaska-Juneau tried to buy the lumber away from you?

A. No; the lumber was already ordered.

Q. Who got that lumber, the Treadwell Company or the Alaska-Juneau Company?

A. Well, he spoke of the Alaska-Treadwell Company.

Q. The Treadwell Company claims to have the first output of the James mill—they claim that right, don't they? A. Yes.

Q. And they exercised that right and took the lum-

(Testimony of Angus Mackay.)

ber that you wanted? A. That I had ordered.

Q. That is all there is about that, isn't it—you got lumber afterwards from other sources?

A. Yes; it was pretty late, though.

Q. But you got your lumber anyhow?

A. Oh, yes; I got it.

Q. That same fall, and continued your work. There are other mills in this country besides the James mill?

A. Well, it was getting very late in the fall, and they were closing down about that time; they don't run all the time up in this country.

Q. Now, these lawsuits that you spoke of that were pending between these companies, weren't they all brought by the Ebner Company against the Alaska-Juneau Company? A. I believe not.

Q. You know those suits were commenced by the Ebner Company, and the Alaska-Juneau are defendants in all these suits, aren't they?

A. No, I don't. [1079—929]

Q. You know, Mr. Mackay, that most of those suits were brought by the Ebner Company, don't you?

A. No. I don't.

Q. And it was the bringing of these lawsuits, you think—did you mean to testify that that in any way interfered with your getting money to carry on your operations? A. Oh, yes.

Q. That was the thing you referred to when you said the Alaska-Juneau—those are the disputes that you referred to as interfering with your getting money? A. The litigation.

(Testimony of Angus Mackay.)

Q. The litigation—that is, these lawsuits that were brought, and that is the only thing you referred to, wasn't it, Mr. Mackay?

A. The litigation and the jumping of the claims.

Q. That was all in connection with the same litigation, wasn't it? A. Yes.

Q. And there were not any other claims jumped except those that were in litigation—the others were all litigated? A. I don't know about that.

Q. That is as far as the Alaska-Juneau Company interfered with your getting money?

A. Yes, the litigation and the jumping of the claims.

Q. But the claims you claim were jumped were all in connection with these lawsuits?

A. I presume so.

Q. So it was the litigation, or matters connected with that litigation that you referred to—that is the only thing that the Alaska-Juneau did in any way to hamper you in getting money, was it not?

A. Capitalists are kind of scarey, anyhow, and are easy to slide back. [1080—930]

Q. That is what scared the capitalists, is it?

A. That is my belief, and it is very likely so.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Now, I will ask you if this amount of money that you have testified concerning as having been expended covered the machinery that was purchased?

A. No, it did not.

(Testimony of Angus Mackay.)

Judge WINN.—Now, I desire to ask Mr. Mackay another question, and we will consider him to be recalled.

Q. I will ask you, Mr. Mackey, why it was that this new air-compressor wasn't installed at Shady Bend on Cape Horn No. 2 and used before it was used?

A. Well, we didn't have the money for to install it and to move the machinery away from the dock.

Judge WINN.—That is all.

(WITNESS EXCUSED.)

Judge WINN.—Will you admit that the Ebner Gold Mining Company is a corporation, such as it is alleged in the pleadings in this case, and that it has paid its annual license fee—the same admission you asked me to make?

Mr. HELLENTHAL.—Let the record show that for the purposes of this case I admit that the Ebner Gold Mining Company is a corporation, and has paid its license fee. [1081—931]

WILLIAM M. EBNER, upon being recalled as a witness on behalf of the defendant, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Testimony of William M. Ebner for Defendant
(Recalled).**

Direct Examination.

(By Judge WINN.)

Q. I think, Mr. Ebner that you testified, when you were on the stand before, that some time ago and about the time that you sold your stock to Mr. Underwood, or made a contract for the purchase of it, that

(Testimony of William M. Ebner.)

you deposited a deed to the Cape Horn lode and the Eureka lode mining claims,—you so testified, didn't you? A. Yes, sir.

Q. Now, I will hand you a quitclaim deed, marked for identification as Defendant's Exhibit "G-1," and ask you if that is your signature to that instrument?

A. Yes, sir.

Q. Now, I will ask you, Mr. Ebner, if you know what became of those deeds that you executed and left with Mr. Underwood for those two pieces of property?

A. No, sir; I don't; they were all deposited in New York with the escrow papers, and I don't know what became of them.

Judge WINN.—I will state to the Court before offering this deed that we have made a search of the records for those deeds; I supposed they were here on record, but as yet I haven't found them, and I thought the quickest way out of it was to have Mr. Ebner execute another deed for the property to the Ebner Gold Mining Company. I have identified it at this time and if we don't find the others I will offer this in before I close the case. I think that is all, Mr. Ebner. [1082—932]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, you gave Mr. Underwood a deed, which was put in escrow at the time you sold your stock, to this Cape Horn and Eureka claim?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. And that deed you haven't been able to find since?

A. I haven't looked for it; I understand it hasn't been placed on record, and nobody seems to know where it is.

Q. That is the reason you executed a new deed to this property? A. Yes, sir.

Q. The old deed was never delivered to Mr. Underwood—or somehow or other it never got on the records, anyhow?

A. It never got on the records, it seems.

Q. All you know about it is it was placed in escrow? A. Yes, sir.

Q. And that is as far as you know about that?

A. Yes, sir.

Judge WINN.—There was no consideration to you for the execution of this deed that I have identified?

A. No, sir.

Q. (By Mr. HELLENTHAL.) This deed was just merely given because about a year ago or so the stock was paid for, wasn't it, Mr. Ebner?

A. About two years ago.

Q. And at that time, Mr. Underwood became entitled to the deed to the Cape Horn and the Eureka?

A. Yes, sir.

Q. So the consideration was paid two years ago for the Cape Horn and Eureka, when it was first given into escrow? A. Yes, sir.

Q. And this deed is given because the deed that Mr. Underwood should have had two years ago has been misplaced? [1083—933] A. Yes, sir.

(Testimony of William M. Ebner.)

Q. Mr. Underwood paid for the property two years ago, and you now give this deed to clear up the property? A. Yes, sir.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1084—934]

Mr. BURTON.—We now desire to offer in evidence the location notice of the Cape Horn Lode, which is one of the location notices referred to by Mr. Marshall when he was on the stand; location notice of the Eureka lode; deed from George Duke to Anna L. Zimmerly for a $\frac{1}{3}$ interest in the Eureka and Cape Horn lode claims; deed from Fred Micho to William M. Ebner for a $\frac{1}{3}$ interest in the Cape Horn and Eureka lodes; deed from Anna L. Zimmerly to William M. Ebner for a $\frac{1}{3}$ interest in the Eureka and Cape Horn lodes; deed from William M. Ebner to A. S. Lovett for a $\frac{1}{3}$ interest in the Eureka and Cape Horn lodes; deed from William M. Ebner to William Power Wilson for a $\frac{1}{3}$ interest in the Cape Horn and Eureka lode claims, and also a $\frac{1}{6}$ interest in the Cape Horn and Eureka mill sites; deed from Arthur S. Lovett to Anna L. Zimmerly of a $\frac{1}{3}$ interest in the Eureka and Cape Horn lode claims; deed from William Power Wilson to William M. Ebner of all his right, title and interest in and to the Cape Horn lode claim, the Eureka lode claim and the Cape Horn and Eureka mill sites; and forfeiture notice to Anna L. Zimmerly, signed by William M. Ebner and William Power Wilson.

(Whereupon said instruments were received in evidence and marked, respectively, Defendant's Ex-

hibits "H-1," "I-1," "J-1," "K-1," "L-1," "M-1," "N-1," "O-1," "P-1," and "Q-1.")

Mr. BURTON.—If your Honor please, we will now substitute the certified copies of the exhibits which Mr. Marshall testified about.

The COURT.—Very well.

(Whereupon said exhibits were marked as follows:
Book 15 Lodes, page 406, Defendant's Exhibit
R-1.

*Book 16 Lodes, page 104, Defendant's Exhibit
S-1.

Book 23, Deeds, page 172, Defendant's Exhibit
U-1.

Book 25, Deeds, page 1, Defendant's Exhibit V-1.

Book 25, Deeds, page 4, Defendant's Exhibit W-1.

Book 25, Deeds, page 2, Defendant's Exhibit X-1.

Book 19, Lodes, page 304, Defendant's Exhibit Y-1.

Book 23, Deeds, page 419, Defendant's Exhibit Z-1.

Book 20, Lodes, page 104, Defendant's Exhibit A-2.

Book 25, Deeds, page 17, Defendant's Exhibit B-2.

Book 25, Deeds, page 18 Defendant's Exhibit C-2.

*Book 22 Deeds, page 295, Defendant's Exhibit
T-1:) [1085—935]

Mr. BURTON.—The papers for which we have substituted certified copies are as follows, respectively: location notice of the Auk Chief; location notice of the Taku Queen; deed from Thomas J. McCully and E. M. Barnes to H. T. Tripp for the Auk Chief and Taku Queen lodes; deed from H. T. Tripp to H. W. Hoops of the Taku Queen and Auk Chief;

deed from Herman W. Hoops to Sidney J. Jennings of the Taku Queen, the Auk Chief, the Fractional Claim, the Parish Mill site and the water right; deed from Sidney J. Jennings to Ebner Gold Mining Company of the Taku Queen, Auk Chief, Fractional Claim, Parish Mill site, and water right; deed from Alaska-Ebner Gold Mines Company to Ebner Gold Mining Company of the Taku Queen, Auk Chief, Fractional Claim, Parish Mill site and water right; location notice of the Cape Horn No. 2 lode; deed from William M. Ebner to H. W. Martin of the Cape Horn No. 2; location notice of the Mackay lode claim; deed from Albert E. Graham to Wm. M. Ebner of the Mackay lode claim; deed from William M. Ebner to Ebner Gold Mining Company of the Mackay lode claim.

We also offer in evidence location notice of the Parish No. 1 lode claim; deed from William M. Ebner to the Ebner Gold Mining Company of the Parish No. 1 lode claim, the Lotta mill site and the Keystone mill site; location notice of the Parish No. 2 lode claim; deed from Alaska-Juneau Gold Mining Company to Ebner Gold Mining Company for the portion of the ground which conflicted with the claim they claimed as the Colorado lode claim.

(Whereupon the said instruments were received in evidence and marked, respectively, Defendant's Exhibits "D-2," "E-2," "F-2," and "G-2.")

Mr. BURTON.—We also offer in evidence location notice of the Fraction placer claim.

(Whereupon said location notice was received in evidence and marked Defendant's Exhibit "H-2.")
[1086—936]

Mr. BURTON.—I don't care about examining the records any further and I will now offer in evidence the deed that Mr. Ebner identified this morning, being a conveyance by him to the Ebner Gold Mining Company of whatever interest he had in the Cape Horn No. 2 and Eureka.

(Whereupon said deed was received in evidence and marked Defendant's Exhibit "G-1.") [1087—937]

The defendant, to further maintain the issues on its part, recalled as a witness, D. D. MUIR, Jr., who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions, as follows:

**Testimony of D. D. Muir, Jr., for Defendant
(Recalled).**

(Question previously asked by the Court repeated to witness, as follows:)

(Questions by the COURT.)

Q. Mr. Muir, I want to get in my mind an idea of how much water-power you require outside of the fact of your ultimate requirements when you get a 200-stamp mill or whatever stamp-mill you might erect for the Ebner operations on your work; I want to know how much water-power you are using and how much water-power *would* need to develop this property until you have arrived at a conclusion where to put your mill?

(Testimony of D. D. Muir, Jr.)

A. Your Honor, that is such a broad question, if I might say so, I cannot correctly answer it for the reason I cannot foresee developments right straight through until we reach the point where the mill is to be built, but I can estimate those things as near as I can, what we will need in the very near future, and then tell you as development progresses it will constantly be on the increase and so our power consumption and power demand will also be on the increase; but what that increase will be I cannot say.

The COURT.—Can you tell me how much water-power, as measured in miner's inches, you are using now and were using at the beginning of this suit?

A. Well, on the first question I have figured out as closely as I can what I consider in the immediate future for the [1088—938] development alone will be the requirement in horse-power, second-feet and miner's inches; I should say that we will need about 30 second-feet, that in miner's inches will be 1200 miner's inches.

Q. That is what you will need in the near future?

A. In the near future for development; that does not include any power for milling purposes or any power demands that might be made in the future on the milling end of it.

Q. But it does include what you might need in operating this stamp-mill? A. Yes, sir.

Q. Now, tell me how much you were using at the time this suit was begun?

A. Between five and six hundred inches.

Q. How long have you been using and requiring

(Testimony of D. D. Muir, Jr.)

between five and six hundred miner's inches?

A. Well, that would be from about the time the sampling-mill was installed and started.

Q. Was that the time—when was that?

A. That was in—the mill was completed in the early part of May.

Q. 1914? A. This year; yes, sir.

Q. Prior to that, how much were you using?

A. Well, when we started the mill we also started additional developments in the mine, which took additional power; I should say from about six to eight second-feet, that would be between 300 and 350 miner's inches at a maximum.

Q. At what time of the year does Gold Creek get such a scarcity of water that you cannot get that number of inches?

A. I can speak only from what occurred last winter, and that [1089—939] was between the latter part of December and the latter part of February; the latter part of December, 1913, and February, 1914.

The COURT.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Muir, to what did you apply power at the time this suit was commenced?

A. State that question, Mr. Hellenthal, please, again.

Q. To what machine or apparatus did you apply power at the time this suit was commenced?

(Testimony of D. D. Muir, Jr.)

A. Power was being applied to the compressor, to two fans, to the mill and the generator, and machinery in the assay laboratory.

Q. Machinery in the assay laboratory, two fans, a compressor and a five-stamp mill?

A. And the generator.

Q. And for lights? A. Yes, sir.

Q. How many horse-power did it require to operate the lights? A. About 25.

Q. How much for the 5-stamp mill?

A. It requires an equivalent in water consumption of 60 horse.

Q. Sixty horse-power to operate 5 stamps, Mr. Muir?

A. I stated that it required an equivalent amount of water to generate 60 horse-power.

Q. I am asking you how many horse-power does it require to operate that 5-stamp mill?

A. And that is my answer. [1090—940]

Q. Your answer is that it requires 60 horse-power to operate 5 stamps?

A. It requires the equivalent—

Q. I am not asking you what it requires in an equivalent.

A. If I answer your question you will have to allow me to explain and qualify why I make that statement.

Q. I am asking you what amount of power measured in horse-power does it require to operate that 5-stamp mill—about 15 horse-power, doesn't it?

(Testimony of D. D. Muir, Jr.)

A. No; it will require a little more than that, Mr. Hellenthal, on account of the pressure.

Q. How much more?

A. Oh, I should say a minimum of 25 horse-power.

Q. It is the general way of figuring the horse-power required for mills at 5 horse-power per stamp, including the mining and milling and all the other requirements—that is the way we generally figure power in this country, isn't it?

A. Well, I couldn't say in this country; I know it is not customary in other sections of the country, because it depends entirely on the mill and what kind of mining you are doing.

Q. Now, you think this little mill would require how much power measured in horse-power to operate just the mill alone without reference to getting the ore out? A. Oh, about as I said, 25 horse.

Q. Now, how much does it require to drive that compressor that you have installed there measured in unit horse-power?

A. It would require and equivalent of 600 horse-power.

Q. Equivalent to how much?

A. 600 power—horse-power.

Q. I am not asking you what equivalent it requires; I am asking you how many horse-power—how much actual power measured in [1091—941] unit horse-power does it require to drive that compressor?

A. The compressor is rated at 360 horse.

Q. That is the rated capacity of it, that is the full

(Testimony of D. D. Muir, Jr.)

capacity at 100 pounds, is it not, Mr. Muir?

A. That is 2,000 cubic feet of free air per minute at 100 pounds pressure.

Q. That is the rated requirement of the compressor when operated at full load, is it not?

A. That is right.

Q. Now, how much power, measured in horse-power, does it require to drive your fan—how much does one of those fans require?

A. About 17 horse.

Q. That is included in the generator, isn't it—they are electric fans, aren't they?

A. No, sir; they are belt connected to the water motor.

Q. They are driven by direct power?

A. No, sir; they are belt driven.

Q. They are driven by power directly produced from the water and are not driven by electric power?

A. No.

Q. How much power measured in horse-power does it require for those fans?

A. About 17 horse apiece.

Q. Now, that is all the machinery you have there, isn't it—no, you have an assay office—how much power do you require in that?

A. About 20 horse.

Q. That would be a pretty good, liberal allowance of power for an assay office, wouldn't it, Mr. Muir?

A. Yes. [1092—942]

Q. Now, to drive that generator—do you mean that actually requires 25 horse-power to drive that

(Testimony of D. D. Muir, Jr.)

generator—is that the rated requirement?

A. It will take about that; yes.

Q. Is that what it is rated at?

A. No; it is rated at about 18½ horse; its delivery, there is a loss of ten per cent in there besides the loss at the wheel.

Q. You think it would require or might require 25 horse-power?

A. I am pretty certain that it would require 25 horse-power at the wheel.

Q. Now, that is all the machinery you have, isn't it?

A. Yes.

Q. Now, what additional machinery will you be able to use in connection with this mill—that is all the machinery that is now on the ground, isn't it, Mr. Muir?

A. Yes, sir.

Q. Now, if you should carry on your development as you are now doing, that is all the machinery you can use, isn't it, Mr. Muir?

A. Oh, no; not necessarily.

Q. What other machinery can you use?

A. We are very shortly going to put additional power in the mill.

Q. Additional power in the mill?

A. Yes, sir.

Q. Haven't you got enough power for those 5-stamps?

A. We have other machinery in the mill besides 5-stamps, and we are adding more all the time.

Q. What other machinery have you?

A. We have a concentrator, Vanner, amalgamating barrel and settling pans.

(Testimony of D. D. Muir, Jr.)

Q. Is that all? [1093—943]

A. That is all right now.

Q. A vanner takes one-half horse-power, doesn't it?

A. Yes; I think one and one-half would be a fair estimate.

Q. One-half, not one and one-half, but one-half?

A. Yes; one-half will run it.

Q. What does that amalgamating barrel require—requires one horse-power, doesn't it?

A. Yes, I think that will cover it.

Q. That is all there is, isn't it, Mr. Muir?

A. Well, it will take something to run the concentrator.

Q. How much for the concentrator?

A. Probably one and one-half horse-power.

Q. What kind of a concentrator is that going to be?

A. Well, I haven't decided whether it will be Deester or whether it will be a—

Q. Either one of those concentrators requires one-half horse-power, doesn't it, or at the maximum one horse-power?

A. If that power is delivered direct, yes; but in our case it is not delivered direct; we are delivering power up there through a small pipe and the conditions in the Ebner tunnel are such that it is going to take twice the amount of power and twice the amount of water to deliver the power up there; that is why I speak of the equivalent.

Q. That is because your pipe is not sufficient?

A. That is true.

(Testimony of D. D. Muir, Jr.)

Q. Now, if you install sufficient pipe then you would only require one-half as much power?

A. If we built the plant entirely over we might approach something like that.

Q. Now, what other machinery could you install in connection with your development work that requires power except what [1094—944] you have mentioned?

A. Well, we are going to install another wheel in the mill to run the crushers separately.

Q. The compressor separately?

A. The crusher.

Q. That is a part of the mill requirements, isn't it, that you are now using?

A. Now, Mr. Hellenthal, it is pretty hard to run a crusher on the same wheel as you are running stamps on.

Q. You are not running a crusher and stamps on the same wheel, are you? A. We are.

Q. If you take the crusher off and put in a separate wheel it will not increase the amount of power necessary, will it?

A. It will increase the water equivalent necessary to produce that power.

Q. You will need this power, then, for your stamps because you have taken the load off that wheel, won't you?

A. Yes; we will need more water, because we are piping it through there and we are going to have a greater loss in the head.

Q. You will have two pipes instead of one, and if

(Testimony of D. D. Muir, Jr.)

you have a leaking pipe you will lose that water?

A. No; the pipes are not leaking; it is the size that causes the loss.

Q. That is all you will lose, whatever you lose by friction or otherwise by having two pipes instead of one?

A. Yes; but the power requirements in the near future are, as I have stated, about 30 second-feet or 1200 miner's inches.

Q. Now, the difference, Mr. Muir, in power that you will require after you install this additional wheel in your mill and take off the load from the original wheel and put in [1095—945] this second wheel—how much additional power as measured in horse-power will that require?

A. It will require an equivalent to about 60 horse-power.

Q. I am not asking you for equivalents—how much additional power will that require?

A. To answer your question I have got to tell you the condition up there; we will need that quantity to deliver that power under the present system.

Q. I am asking you how much power as measured in horse-power that wheel will require in addition to what you are now using, not what equivalent in water, but how much in actual power measured in horse-power?

A. That we will have to have at the wheel?

Q. What will it take to run the crusher for the 5-stamp mill?

A. The crusher we have up there will take any-

(Testimony of D. D. Muir, Jr.)

where from 10 to 20 horse-power delivered at the wheel, but to get that at the wheel we have to have an equivalent of 60 horse-power through the pipe-line.

Q. In order to have 10 horse-power you have to waste 50 horse-power?

A. There is no waste in water at all; there is a loss in efficiency but nothing in water.

Q. That is a loss in efficiency of about 400 per cent—is that the kind of machinery that you have established—have you apparatus over there where you lose an efficiency of 400 per cent?

A. I said it would take between 10 and 20 horse-power.

Q. You actually have machinery there that loses efficiency of from three to six hundred per cent?

A. Not the machinery, the loss is in the pipe-line.

Q. That pipe results in so much loss? [1096—946] A. Due to the size of the pipe.

Q. Now, Mr. Muir, what other apparatus do you contemplate installing, if any?

A. Why, as the mine develops there will probably be numerous hoists go in; there will be an electric haulage system; and it is very probable that there may be work done on the upper workings that may necessitate some power.

Q. What kind of a haulage system are you going to put in?

A. We haven't decided yet, but it is pretty sure we are going to put in one pretty soon.

Q. If you put in an electric haulage system, how

(Testimony of D. D. Muir, Jr.)

much will that require in actual horse-power?

A. Why, if it demands—

Q. In connection with your development work now, how much would it require, I mean?

A. We would probably have to increase the size of our motor.

Q. What motor?

A. Generator, I mean, not motor.

Q. What is the capacity now?

A. Eighteen horse.

Q. You would have to develop it to what?

A. Twenty-five to drive it—that would be 25 horse additional.

Q. Now, what other apparatus could you install there in that connection?

A. Well, there will probably come a time when that pipe-line would not be enough, and probably the compressor might not be large enough, and there would probably be the installation of a pipe-line and a new compressor.

Q. That compressor is a pretty good size compressor, isn't it, Mr. Muir?

A. She is rated, as I said, at 1,950 to 2,000 cubic feet per [1097—947] minute, good for about 18 or 20 drills.

Q. That is a good many drills, isn't it, Mr. Muir?

A. That would be equivalent to eight or nine faces, which is not very excessive development.

Q. You don't expect to develop more than eight or nine faces—at any one time, do you?

A. If I knew just exactly what we were going to

(Testimony of D. D. Muir, Jr.)

do I could answer this question very promptly.

Q. You don't know what you are going to do?

A. I cannot foresee our future needs to go ahead and answer this question; I know we are going to develop the property.

Q. You haven't any plans at the present time to put in eight or nine faces at once, have you?

A. The present idea exists at the present to this extent, when that raise is put through and development is started on different levels from that we will undoubtedly have over nine faces, and when that compressor reaches the limit it will be replaced.

Q. How much did you say that compressor was rated at?

A. 1950 to 2,000 cubic feet of air per minute.

Q. You know the horse-power that is required for that? A. 350 horse.

Q. That is all the machinery you could put in there—that is all you could use in the future development work, isn't it, Mr. Muir?

A. Well, we might put in an electric generating plant, and use the electricity underground for hoisting.

Q. We have already calculated that, haven't we, Mr. Muir? A. Oh, no.

Q. How much would you require for that?

A. That would depend on the development.

[1098—948]

Q. How much could you use on ordinary development work—you could figure pretty close how much additional horse-power that would require?

(Testimony of D. D. Muir, Jr.)

A. Well, you people are using over there about 3,000 horse-power underground; I don't know why the time should not arrive when we shall use an equal amount.

Q. You know, Mr. Muir, that we only use one electric hoist underground, don't you?

A. I didn't say anything about hoists, I said in your operations of mining, you are probably using 3,000 horse-power.

Q. I am asking you now, Mr. Muir, how much additional will it require for generating capacity—how much will you have to enlarge your power for the electric hoist you may need in connection with your development work?

A. If we go into the future and still continue to talk in the future, we might need 3,000 horse-power.

Q. Now, Mr. Muir, I think you ought to come down to earth and talk sense; what I am trying to get at isn't what the probabilities are, but in a reasonable way, Mr. Muir, what additional generating capacity would you require to furnish power for such electric hoist as you might want to put in in connection with your development?

A. A hoist might be put in that would require 75, 100 or 150 horse, depending on the requirements.

Q. Where would you use such a hoist?

A. Depends upon the development.

Q. What would you do with such a thing?

A. We assume, and we are pretty well backed up in our assumption, that there is ore below the present level.

No. 2795

United States
Circuit Court of Appeals

For the Ninth Circuit.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

Transcript of Record.

VOLUME IV.

(Pages 1217 to 1632, Inclusive.)

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

JUL 1 - 1916

F. D. Monckton,

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District of Alaska, Division No. 1.

(Testimony of D. D. Muir, Jr.)

Q. You expect to sink below that tunnel level in connection with this development work? [1099—949]

A. We are liable to sink below the tunnel level.

Q. And you think you might use as much as an additional 100 horse-power for that purpose?

A. Yes; and maybe more.

Q. Now, what else could you use it for, Mr. Muir, in connection with this development or yours?

A. Well, I have got to reiterate myself, Mr. Hellenenthal, in answering your question; I have to go over the same questions.

Q. Now, you have explained to me everything that you could possibly use power for in your development, haven't you?

A. My answer to your question is just the same as I stated to the Judge; I do not know and cannot foresee the future of the development, but I make the estimate now that we will require 30 second-feet of water, or 1,200 miner's inches of water and you come back and tell me we need only so much water—

Q. I am asking you now if those are the only apparatus or machines that you can now foresee that you can use in connection with your development work?

A. As far as I can foresee, yes, sir.

Q. Now, Mr. Muir, how much head have you got?

A. 427 feet.

Q. How many horse-power will a miner's inch develop with a head of 427 feet, vertical horse-power?

A. Oh, it will be very close to a horse-power to a miner's inch.

(Testimony of D. D. Muir, Jr.)

Q. It will be a good deal more than that, won't it?

A. A miner's inch is a foot and a half of water a minute, and anything else is absurd.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [1100—950]

The defendant, to further maintain the issues on its part, introduced as a witness J. R. WINN, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of J. R. Winn, for Defendant.

Direct Examination.

(By Mr. BURTON.)

Q. How long have you resided in Juneau?

A. Since 1897.

Q. How long have you been familiar with what is known as the Ebner Gold Mining Company's properties.

A. Why, I had some law business for Mr. Ebner before he ceased operations up there, and became somewhat familiar with the properties before the disposition by Mr. Ebner of his stock to Mr. Underwood as he has testified concerning.

Q. Are you attorney for him—have you been connected with the Company as attorney for some years, the Ebner Gold Mining Company or the Ebner Company?

A. Well, I was connected principally with the old Ebner Company; then when some work was going on here under Mr. Mackay—I suppose he was backed

(Testimony of J. R. Winn.)

by either the Alaska-Ebner Gold Mining Company or the California-Nevada Copper Company, and, of course, we have had business in a way for all those companies pertaining to this Ebner property.

Q. Well, you have been attorney for the Ebner Gold Mining Company for several years, have you not, Judge Winn? A. Yes, sir.

Q. Prior to 1910? A. Yes, sir.

Q. I hand you a picture and ask you if there is anything on [1101—951] there that you particularly recognize?

A. This is Defendant's Exhibit "F-1"; it is the photograph that was identified by Mr. Wettrick this morning, and I identify the post or board near the intake of the new Ebner flume and also the cross-board that is on it as being the place at which I posted up a certain location notice that I made for the Ebner Gold Mining Company, which has been offered in evidence in this case; I also may state in that connection that Al Black came over at the time I put up this notice, and Mr. Black had been at work up there for some days, and had the approach for the right of way of the flume cleared away for quite a little distance from the intake of the flume at the Ebner dam; Black came over and he was there at the time the notice was posted, and I walked over and saw what work he had been doing.

Q. Was anyone else present at the time you posted that notice besides Black?

A. Yes; Mr. Hill went up there with me and Mr. Wettrick.

(Testimony of J. R. Winn.)

Q. In examining this picture did you notice there anything marked as being the place you posted your notice?

A. Yes; it is indicated by that upright board or post at the new intake; the new intake is quite visible there; it is near the center of this picture and it shows plainly on the picture.

Q. I will ask you, Judge Winn, if in connection with the property of the Ebner Gold Mining Company you had charge of lawsuits brought against that company, or the bringing of lawsuits either for or against the company, since 1910?

A. Yes; there are quite a number of suits here pending.

Q. Do you know what those suits are?

A. I will also state that I was on this property at the time Mr. [1102—952] Bent and his party came here.

Q. What year was that?

A. In July or August, 1910; and since they came here there has been a series of lawsuits commenced by the Alaska-Juneau Gold Mining Company, the plaintiff in this case, against either the Ebner Gold Mining Company or the California-Nevada Copper Company; one case is the Alaska-Juneau Gold Mining Company vs. The California-Nevada Copper Company, No. 823-A of this court.

Q. Do you know that suit is about?

A. I don't unless I read the complaint. (Complaint handed to witness.) This is a suit that was commenced by the plaintiff company in this suit and

(Testimony of J. R. Winn.)

asked for a restraining order to restrain the California-Nevada Copper Company and the Ebner Gold Mining Company, Angus Mackay, Al Graham and F. J. Wettrick from destroying certain flume lines that they contend they were building there on what they call the Oregon lode claim, and what we contended at that time as being the Parish No. 2 lode claim.

Q. Was this what they call the old Oregon lode claim or the Datson Oregon?

A. The records will show there, I don't know.

Q. When was that suit brought?

A. It will show—I will see when the summons was issued.

Q. The complaint was filed November 3d, 1910.

A. That is the case I referred to and grew out of a conflict of them claiming the Oregon claim and our claiming it was the Parish No. 2 claim, both of which claims I think are referred to and included in Judge Cushman's judgment which is filed in connection with the plaintiff's reply in this case—both Oregon [1103—953] claims are mentioned in his decree, and this one of those Oregon claims that I am stating concerning and the Parish No. 2 that I referred is the Parish No. 2 referred to in that decree of Judge Cushman; now, there is another one, the Alaska-Juneau Gold Mining Company vs. The Ebner Gold Mining Company, No. 826-A.

Q. I hand you the papers in that case which show that the complaint was filed November 17, 1910—what was that suit brought for?

(Testimony of J. R. Winn.)

A. This is a suit brought by the plaintiff company in the suit we are trying now against Angus Mackay, B. M. Behrends, and all others similarly situated or acting or claiming to act as associated in a certain corporation known as the Ebner Gold Mining Company, a corporation, and is a suit claiming what they term here the Oregon lode claim—whether that is the Datson Oregon lode claim or the old Oregon lode claim I do not know.

Q. Do they give the location of that Oregon in the complaint?

A. It does not give the date of the location of the claim; anyway, it is one of the Oregon lode claims that is mentioned in the decree of Judge Cushman, which is set forth in the reply in this case; that decree refers to the Corbus Oregon lode claim and also to the Datson Oregon lode claim; they seek here relief against the plaintiff to quiet title.

Q. Do you remember cause No. 804-A of this court brought by H. T. Tripp against the Alaska-Juneau Gold Mining Company—I will hand you the papers.

A. I think that suit was brought over some conflict in a general way, because I think the suit has been dismissed; but it was brought over some conflict that was claimed between the Alaska-Juneau Company and Mr. Tripp, who was then acting in the capacity of representative of the Ebner Company; Tripp had [1104—954] either made some location of property or taken some property over in his name, but I think that suit was dismissed without

(Testimony of J. R. Winn.)

prejudice, and it grew out of the building of this cabin, I think, across the creek, known as the Harri cabin.

Q. Now, Judge Winn, you have testified to two or three lawsuits having been brought—I will ask you about that time how many lawsuits were brought involving the property rights of the Ebner Gold Mining Company?

A. Out of transactions that took place during the year of 1910, or I might say out of transactions that took place principally after Bent and his party visited Juneau in July and August of 1910, there has been commenced about nine or ten suits; a large majority of them have been commenced by the Alaska-Juneau Gold Mining Company against the Ebner Gold Mining Company, or someone connected with that company; for instance, the California-Nevada Copper Company or the Alaska-Ebner Gold Mining Company, and against Mackay and the people who were doing work up there, looking towards the carrying out of this plan of development; and there was, during that time, some three suits, I think, commenced by the Ebner Gold Mining Company against that same company over disputed property included in what had theretofore been claimed as the Ebner Gold Mining Company's property.

Q. You say about nine or ten suits in all were brought from 1910 on?

A. Yes, I think all those suits were commenced after August, 1910.

Q. Cause No. 803-A, the Ebner Gold Mining Com-

(Testimony of J. R. Winn.)

pany against the Alaska-Juneau Gold Mining Company, the complaint of which has been offered in evidence in this case, do you remember that suit, Judge Winn? [1105—955]

A. I looked over the complaint Mr. Hellenthal offered the other day; I didn't read it closely; as I remember that is probably one of the first suits that we brought; we ascertained at that time that the Alaska-Juneau Gold Mining Company had made a location—that is, the Datson Oregon claim, which is one of the Oregon claims that Mr. Wettrick testified to this morning, covering part or a portion of the Lotta patented claim, and we ascertained at that time that they had been going in and over the property, and that was to restrain them and keep them off of the property; I have forgotten what claims are mentioned in that suit, but that is the general nature of the suit—we claimed they were trespassing upon the property of the Ebner Gold Mining Company.

Q. At that time they had built the cabin, had they not—the cabin of Harri?

A. I don't remember; Mr. Harri's testimony will show as to that; anyway we found out that they were in and about the property at various points, commencing down here by the cabin on the Lotta claim.

Q. Do you know, what, if any, effect these lawsuits had with reference to the continuing of the development work upon the property? A. I do, sir.

Q. Will you state just how you know it and how you arrived at your information?

(Testimony of J. R. Winn.)

A. After Ebner and his party left here in 1910, and along in the latter part of August of that year and on up through the fall we had ascertained about these various locations that the Alaska-Juneau had been making; they had also during that time, I think in September of that year or in October, located what was referred to by Mr. Wettrick in his testimony [1106—956] as the Canyon lode claim, that covered a large part of the Lotta patented claim; they had also the Colorado claim located, and we ascertained sometime—let me see, that was in August, 1910—well, we found out what was going on, and were communicating with these parties back east all the time concerning it and finally they called me back east— (Objection to testimony.)

The COURT.—I will allow you to go this far: That the fact the suits had been brought here and the property was in litigation had a deleterious effect on your raising money in New York and you could not proceed as you otherwise would have done.

Q. Following out the Judge's suggestion, you may testify, if you know, just what effect, if any, these lawsuits that you have testified to had with reference to raising money to do the work on the property of the Ebner Gold Mining Company?

A. It prevented raising money for the prosecution of this work, and caused the delay that Mr. Mackay testified to during which there was nothing but assessment work done.

Q. I will ask you if you were back in New York in connection with this property?

(Testimony of J. R. Winn.)

A. I was, dealing with the people back there who were interested in it and who were raising the money.

Q. I will ask you, Judge Winn, how long it had that effect—can you state in any way how you obtained the information that it had the effect of preventing the raising of money?

A. As I say, it was by reason of the conditions of the property that I went back to New York.

Q. And while in New York you did ascertain that these lawsuits were preventing the raising of money to carry on the work? A. I did. [1107—957]

Q. Do you know from memory when the receivers were appointed in New York for the Ebner Company here?

A. I don't know the exact date; it was in April, 1912, I think.

Q. Do you remember when Mr. Mackay was appointed ancillary receiver?

A. He was appointed sometime, I think the 24th or 25th of June, 1912, by this court—not by Judge Jennings, but by Judge Lyons.

Mr. BURTON.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Are you sure the fact that these suits were pending had anything to do with the defunct condition of the California-Nevada Copper Company?

(Objection to question.)

Q. The California-Nevada Copper Company were raising this money, were they not, Judge?

A. It was supposed that the California-Nevada

(Testimony of J. R. Winn.)

Copper Company or Mr. Underwood, who was connected with that company, was raising the money part of the time, and then when Mr. Tripp came here, the California-Nevada Copper Company was afterwards changed to the Alaska-Ebner Gold Mines Company.

Q. The same concern?

A. Those two, I understand, are the same, only difference being in the name.

Q. They were raising the money, weren't they?

A. I couldn't say those companies were raising the money when I went back there.

Q. You don't know who was raising the money?

A. Yes; I do.

Q. Who was raising the money? [1108—958]

A. In the first place there were two committees organized, one of which was known as the Chapman committee, representing the bondholders, and another committee named the Cumnock; the two committees together represented all the bondholders, and the bonds that were issued under a certain mortgage is of record here.

Q. By the California-Nevada Copper Company?

A. No.

Q. Who issued those bonds—weren't those bonds of the California-Nevada Copper Company?

A. I don't know; that mortgage is here on record; it is either the California-Nevada Copper Company or the Alaska-Ebner Gold Mines Company; I have forgotten which one is mentioned in that mortgage.

Q. It is the same concern.

(Testimony of J. R. Winn.)

A. They took a mortgage.

Q. They gave a mortgage to the Trust Company.

Q. Did that concern give a mortgage of the stock of the Ebner Gold Mining Company and the property they had succeeded to from Mr. Ebner and also the property of the California-Nevada Copper Company?

A. I think the mortgage is on record and will show, but at the time that mortgage was given I don't know that that company had one cent of stock of the Ebner Gold Mining Company; there is an after-acquired clause in that mortgage which would cover any of the Ebner Gold Mining Company's stock that might come into the hands of the mortgagor.

Q. What was the date of the mortgage?

A. Oh, I don't remember.

Q. It was long before 1910? [1109—959]

A. Yes; before 1910.

Q. That mortgage was given by the California-Nevada Company before 1910, and bonds were issued secured by that mortgage? A. I think that is true.

Q. That mortgage contains a clause by which after acquired property became subject to mortgage?

A. I think so.

Q. And the stock of the Ebner Gold Mining Company and the California-Nevada Copper Company, under that clause, became part of the property covered by that mortgage?

A. Up to sometime, say a year or so ago the mortgagor did not have any more than somewhere be-

(Testimony of J. R. Winn.)

tween 20 and 30 per cent of the stock of the Ebner Gold Mining Company so as to bring it under the terms and conditions of that mortgage, and I am very sure, although I would not be positive, that even they acquired that after the mortgage was given.

Q. So there was only a small per cent of the property of the Ebner Gold Mining Company was affected by that mortgage?

A. None of the Ebner property was covered in that mortgage at all.

Q. And the people that were raising the money were the people representing the bond holders secured by that mortgage in New York City while you were there?

A. These two committees that I told you—the two committees, I think, together on my first trip represented about all of the bondholders under that mortgage; eventually the work was carried on by one committee, the Cumnock committee it seems retired from the field and the Chapman succeeded in getting all the bonds together except perhaps one person, and that was B. M. Behrends here in town, and they [1110—960] succeeded in bringing all of the stock of the Ebner Gold Mining Company under the terms of that mortgage, and that is the foreclosure that was made sometime ago in New York.

Q. That stock was brought in under the terms of that mortgage, the entire stock?

A. I don't think it was brought in there until a few months ago.

(Testimony of J. R. Winn.)

Q. Up to that time there was only about 30 per cent of the stock under that mortgage?

A. They kept collecting it in as fast as they could.

Q. That same committee went about trying to gather up the stock and get it in under the terms of that mortgage? A. I think so.

Q. They didn't succeed until less than a year ago?

A. No; it was more than a year ago.

Q. As soon as they got it under the terms of the mortgage they sold the property, did they not?

A. They sold the stock.

Q. None of the property of the Ebner Gold Mining Company was affected by this mortgage—you have so testified?

A. None of it was affected by the mortgage, only the stock.

Q. But the property itself was not otherwise encumbered?

A. The mortgage does not set forth any description of mining claims.

Q. That mortgage also covered a large amount of property of the California-Nevada Copper Company, didn't it?

A. That I didn't go into and know nothing definite about it; I don't know anything about that property only from casually reading it over—I think it does.

Q. You had nothing to do with that property?

A. Not a thing in the world.

Q. This committee that was trying to reorganize

(Testimony of J. R. Winn.)

the California-Nevada Copper Company, that went broke under Mr. Bent's direction— [1111—961] is that true?

A. I don't know what went broke under Mr. Bent's direction; I can tell you why this money could not be raised if that is what you want to know.

Q. Mr. George Bent was the managing spirit of this enterprise, was he not?

A. That enterprise has never had a managing spirit since I have had anything to do with it.

Q. He was the managing spirit prior to that time, wasn't he?

A. Probably in name; he had the name of manager.

Q. He had enough to do with it to wreck it, didn't he?

A. I don't think George Bent wrecked the Ebner property.

Q. I want to find out what the Ebner Company was doing in the way of raising money?

A. I will tell you if you—

Q. I am asking you if Mr. George Bent didn't have enough to do with this enterprise to wreck it?

A. I cannot say that he did, because Mr. George Bent had nothing to do with the Ebner Company; there was a very small part of the Ebner Gold Mining Company's stock affected by the mortgage—probably not to exceed 20 or 30 per cent; anyway, I am not sure whether that was yet mortgaged before Bent became connected with the Ebner Gold Mining Company.

Q. So you are not sure that the Ebner Gold Min-

(Testimony of J. R. Winn.)

ing Company had anything to do with the raising of funds by this deal or not?

A. The Ebner Gold Mining Company had nothing to do with it.

Q. The property of that company had nothing to do with it?

A. I know after it went into the hands of a committee, not while it was under Bent, but after we closed down the work, and after I made my trip back here, I know the committees had the whole thing in hand, and I know the reason they were not getting any money was because of these lawsuits. [1112—962]

Q. They told you that?

A. Yes; Barauch Brothers, and then as soon as they found out this litigation was on they dropped it.

Q. Don't you think that the fact that Mr. George Bent had never been connected with that property would have the same effect upon your raising much money?

A. I never heard Bent's name mentioned—the first trip I made back there I never had any dealings with him, and never heard his name connected with the raising of money.

Q. You know of your own knowledge that Mr. Bent was never connected with an enterprise that was not wrecked don't you?

(Not answered because of objection.)

Q. Wasn't it general knowledge in New York City and elsewhere among men who are engaged—among mining men who are furnishing money to mining enterprises that Mr. George Bent's connection with

(Testimony of J. R. Winn.)

the property would mean certain ruination?

A. No; I don't know anything of the kind; as I told you Mr. Bent, after my first trip to New York, which was in the spring of 1911, I never did see Mr. Bent or have anything to do with him, and in fact I never heard Mr. Bent discussed one way or the other.

Q. He had at that time dropped out of it, hadn't he?

A. I think he was running and operating one of the pieces of property in California or Nevada when I was there last, which belonged to the California-Nevada Copper Company, or the Alaska-Ebner Gold Mines Company as it was afterwards named.

Q. And all the promoters told you that the reason you could not raise money was because you were in litigation?

A. I don't know that they were promoters, it depends on what you would term a promoter.

Q. These gentlemen were consulted by you, were they not, which [1113—963] you have just recently mentioned?

A. We had a consultation, Thompson Towle and Barauch Brothers.

Q. And you finally succeeded in getting the money for getting the bonds together and selling the property?

A. I had nothing to do with that sale; of course that was made back east.

Q. That happened though?

A. The stock was sold, but the money that has been furnished here has been furnished in the manner in

(Testimony of J. R. Winn.)

which I think Mr. Mackay and Mr. Muir have testified; some of it has been furnished for Mr. George Noble in various ways which has come principally, I think, through the smelting company.

Q. When did the California-Nevada Copper Company go into the hands of a receiver, Judge?

A. Now, I don't know whether the California-Nevada Copper Company ever went into the hands of a receiver; the Alaska-Ebner Gold Mines Company have gone into the hands of a receiver here.

Q. When was that receiver appointed in New York for this concern?

A. For the Alaska-Ebner Gold Mines Company?

Q. Or the California-Nevada Copper Company?

A. One succeeded to the other; those receivers were appointed in New York sometime in April, I think, 1912.

Q. They had been appointed when you were back there? A. Not the first trip I made.

Q. Not the first trip? A. No.

Q. The second trip you made the receivers had been appointed?

A. Now, let me see if that is true—I made a trip in March, 1911, and the next trip, I think, I made there was in October—September or October, 1912, and these receivers were appointed—that is, the receivers had been appointed when [1114—964] I made that second trip—that is right.

Q. When was Mackay appointed receiver here?

A. I gave the date awhile ago, some time in April, I think, in 1912 that he was appointed temporary

(Testimony of J. R. Winn.)

receiver; and another proceeding was pending in this court that was on account of the New York receivers having been appointed, and then it took us until about June 1st again to get the ancillary receiver appointed.

Q. Mackay was appointed ancillary receiver by an order of this court in April, 1912?

A. No, I think it was June, 1912.

Q. You started to have him appointed in April?

A. Yes, I think I started to have him appointed about that time—I think the New York receivers had been appointed before I got Mr. Mackay appointed temporary receiver, and I think that is why I did it, so as to have someone put in charge here until we could have someone appointed ancillary receiver to those appointed in New York.

Q. That was to wind up the affairs of the Alaska-Ebner Gold Mines Company, wasn't it?

A. I don't know—that receivership business and the appointment here, I don't know whether it properly wound it up or not; the complaint is here somewhere on file; I don't know what they prayed for in the complaint, whether it was up to wind up the organization or not.

Q. Now, the California-Nevada Copper Company furnished all the money that went into the construction work of this flume in the year of 1910 or '11, did it not? A. The year of 1910?

Q. Yes.

A. Well, Mr. Mackay was acting under Mr. Bent as kind of assistant [1115—965] manager here;

(Testimony of J. R. Winn.)

I think they must have raised that money before the bonds were sold.

Q. I am asking you if the California-Nevada Copper Company didn't furnish all the money that went into the flume construction in the year 1910-'11—you know don't you?

A. Why, I didn't handle the money, and I don't know; Mr. Mackay got the money before it went into the hands of a receiver; I wasn't paying any particular attention to the financial end of it; I think Mr. Mackay was conducting the business for a while in the name of the California-Nevada Copper Company, and that he was working under their directions.

Q. You know they were doing that work, don't you?

A. I was not back east and I don't know; I had nothing to do with it or the parties that were furnishing that money, whether they sent the money to Mr. Mackay or not, he would be a better judge of that; I don't know.

Q. They were doing the business, however, when that construction work was done in their name—you know that?

A. It was done under Mr. Mackay, whoever he was working for.

Q. You know he was working for the California-Nevada Copper Company, don't you?

A. I think probably he could tell you more about that than I can; I do know they got into financial straits.

Q. When did they get into financial straits?

(Testimony of J. R. Winn.)

A. This work went on from sometime about the 1st of August when we commenced, until when Mr. Mackay has testified that he closed down, or, I think, completed that flume; there wasn't any details I know of during the summer of 1910 and the fall, and then they commenced the tunnel I think in December, 1910 and the money began to slough off.

Q. He worked all the year of 1911, didn't he, on the tunnel?

A. No; I don't think so; I think he closed down the latter part [1116—966] of October or the 1st of November.

Q. He was working during the working season, wasn't he?

A. Yes; he was working with a limited number of men, and some private parties had to go to the rescue to put up some money to keep that work going on, and I think Mr. Hoops put up some.

Q. The company didn't have sufficient means and Mr. Hoops put up some money to carry the work on—is that right?

A. Yes; they could not raise the money on account of litigation.

Q. Now, Judge, I wish you would answer my questions, please—I wish you would answer that question directly—isn't it a fact that the company didn't have sufficient funds and Mr. Hoops, or whatever his name is, put up some of his own private money to carry on the work in 1911?

A. I think Mr. Hoops did put up some money.

(Testimony of J. R. Winn.)

Q. The company had run out of money, hadn't they?

A. They got so they couldn't raise any more money.

Q. And then Mr. Hoops put up some of his own money? A. Yes.

Q. And it was shortly after that that a suit was brought to foreclose this mortgage which was given to secure the outstanding bonds, and a receiver was appointed in that suit?

A. No; I don't think that mortgage foreclosure was commenced for a long time, Mr. Hellenthal.

Q. It was in the spring of 1912, wasn't it?

A. No; I am very sure that foreclosure suit was commenced in 1913; if I am right, I was back there in 1913, and I think that foreclosure suit was commenced in 1913—I wouldn't be sure of it.

Q. There was a suit brought at that time to have a receiver appointed before the foreclosure suit was brought?

A. Yes; when the suit was brought to foreclose the mortgage [1117—967] there were two receivers in foreclosure appointed.

Q. The other receivers were appointed at the instigation of outside creditors upon the application of the receiver or the corporation?

A. He was appointed on the petition of Hammer, who, I think, was a creditor stockholder, but just what his allegations in that complaint are, I couldn't tell you; they have a little different way of appointing receivers in New York than we have here; and I don't know what that complaint does contain; it is

(Testimony of J. R. Winn.)

here on file somewhere.

Q. You have your complaint here asking that Mr. Mackay be appointed ancillary receiver?

A. Oh, probably—probably followed the practice here; you have to make some application of that kind to get a receiver appointed.

Q. You put the other complaint in as an exhibit in that case, didn't you?

A. I think that other complaint is made a part of that other complaint; I think that complaint was drawn in New York—I don't remember.

Q. Now the method of raising money that these gentlemen was resorting to was by the sale of bonds of the California-Nevada Copper Company, wasn't it?

A. Yes; that was the method they first pursued.

Q. That was the method they pursued until the reorganization took place, wasn't it?

A. The reorganization hasn't been perfected yet.

Q. What other methods were pursued other than that of selling the bonds of the California-Nevada Copper Company?

A. Through the Chapman committee on reorganization.

Q. How did they raise money—what did they have to offer as [1118—968] security for money except bonds?

A. That I don't know; I don't know what they did; the Chapman committee in New York raised it through the Smelting Company and I don't know what means they did follow.

(Testimony of J. R. Winn.)

Q. They were giving securities other than securities of the Company, were they?

A. I couldn't say; Mr. Noble is here, you had better put him on the stand.

Q. You don't know as to how these committees that you were testifying to were trying to raise money? A. No; I am not acquainted with that.

Q. Don't you know it was from the sale of the new stock of the company?

A. I don't think it was the sale of the bonds of the company; there was no issue of bonds after the appointment of receivers—not to my knowledge.

Q. You don't know what security these people were offering to intending creditors as security for a loan of the money they were seeing to make?

A. I only know in a general way that the Smelting Company, from people *I that* I have had conversations with and letters that I have had, they will not risk the lending of money on any other security, I think, than the bonds and the stock; now, I don't know, but I am pretty sure that there have been no bonds issued or sold—no receiver's certificates sold, and I don't think they ever sold any of the Ebner stock except as it was brought in by the Chapman committee.

Q. This Chapman committee was trying to raise the money and failed to raise it, didn't they?

A. No; they did finally raise it.

Q. But they were the people who couldn't raise it in 1912 and [1119—969] 1913—isn't that right?

A. As I told you, up to my trip back there in 1913

(Testimony of J. R. Winn.)

there had been two committees, and there had been no unity of action with any of the bondholders; the proposition was taken up and I can state what was done while I was back there looking forward to the going ahead,—

Q. What I am trying to get at is this, Judge—the people who were trying to get the money and failed to raise the money were those two committees?

A. No; it was the receivers to a certain extent; I was back there and had a meeting with the receivers and a meeting with the bondholders.

Q. Prior to the time the receivers were appointed the money was being raised, and the parties that were trying to raise the money were those two committees?

A. Oh, no; not prior to the appointment of the receivers.

Q. Who tried to raise the money then?

A. Well, you see there was only a short time; Mr. Mackay closed down in October, and following shortly the receivers were appointed; I wasn't back east there and I don't know what they were doing.

Q. You were not east at all after the receivers were appointed?

A. I was there twice before but not after.

Q. When you were there the first time there was no effort made to raise money—is that right?

A. The work was going on there; that was the time that Mr. Mackay was driving this lower tunnel; he started, I remember, in December, 1910, and I was back in March, 1911; then they were selling some bonds.

(Testimony of J. R. Winn.)

Q. They were still raising money at that time?

A. Oh, yes.

Q. There was no difficulty in raising the money until you went [1120—970] there the second time?

Q. Well, as I say, the work was falling off, Mr. Hellenthal, and the last money that was paid here and the last pay-rolls, as I say, were taken care of, I think, by Mr. Hoops, and the work was falling off, and Mr. Mackay had on a very small crew driving, and he was running behind in money constantly.

Q. That was after you got back from the first trip?

A. Oh, as I say, the first trip I went back was in 1911, and the work was falling off, and that is the time that the report was going out, as I stated to you, about these lawsuits, and the means of raising money was dropping off.

Q. They were still raising money at that time, but not so much as they had been raising—that is right, isn't it?

A. Let me see—oh, yes; I went back there in March or April, and he closed down his work, I think, in the following October—oh, yes; they were getting some money then on the bonds when I was back there.

Q. And it wasn't until the second time that you went back there in the following year that the real difficulties in raising money had been encountered—isn't that so?

A. Well, as I say, those last payrolls—before Mr. Mackay stopped work he had experienced difficulty in getting money and those last payrolls were paid

(Testimony of J. R. Winn.)

by Mr. Hoops, I think.

Q. That was in the latter part of the year 1911?

A. That work was done prior to October, 1911, because there wasn't any work done in October, 1911.

Q. But it was about that time, wasn't it?

A. He quit work in October, 1911, and whatever was incurred on the property was incurred prior to that time.

Q. That is the first time that they had any difficulty in [1121—971], raising money?

A. They had difficulty all the time.

Q. You have never known of a company of that character not to have had any difficulty, have you?

A. Mr. Mackay, as I understood, was short of money after probably the completion of that flume up there; he was getting a little and doing what he could in driving that tunnel; and I don't know but what that money was raised, the principal part of it, before I went back there.

Q. You know Mr. Tripp, don't you?

A. Yes, sir.

Q. He was discharged in August, wasn't he, 1910?

A. I believe he testified so.

Q. He wasn't paid, was he, by the California-Nevada Copper Company?

A. No; he wasn't paid; he brought a suit.

Q. They didn't have the money at that time, did they?

A. I don't know; there was some defense to Mr. Tripp's suit, I think—there was some question about his salary.

(Testimony of J. R. Winn.)

Q. He wasn't paid and brought suit for his money?

A. He wasn't paid until he got a judgment against the company.

Q. They paid him—they made no defense, did they?

A. He finally got a judgment and they paid up; I think I defended that case.

Q. There was no defense to Mr. Tripp's suit, was there?

A. There was a defense to some portion of it.

Q. The whole amount was paid him, wasn't it?

A. I don't know whether the whole amount sued for was paid or not.

Q. Isn't it a fact that at the time they didn't have the money and Mr. Tripp was discharged?

A. No; I don't know about that. [1122—972]

Q. You don't know when you went back to New York the second time, in the year of 1912, they had difficulty in raising money?

A. Oh, the receivers were trying to raise money.

Q. That is the first real difficulty about getting money they had, wasn't it?

A. I have testified, Mr. Hellenthal,—you are argumentative in your question; as I told you, Mr. Mackay, after the latter part of 1910 was absolutely short of money to go on with any more work; the money was sloughing off and he was working with a small crew of men after the first of January, 1911, and they were experiencing difficulties, and his pay-rolls were running behind all the time, and finally someone had to come to his rescue; the crimps in the

(Testimony of J. R. Winn.)

money commenced in 1910 and kept sloughing off until he couldn't get anything.

Q. But when you went back in 1912 that was the first time in your personal contact with the people who were trying to raise money, that they had difficulty in getting it, that is right, isn't it?

A. No; it is not.

Q. When is the first time that you know of your own personal knowledge of the company having difficulty in raising money?

A. In March, 1911, we were endeavoring to sell bonds, and I went up to Boston to see if we couldn't convince those people that these lawsuits were not so serious, nothing to be scarry over, and their whole remark was that they wouldn't have anything to do with it.

Q. You were trying to sell the bonds of the California-Nevada Copper Company?

A. They were selling some few, I don't know what per cent they [1123—973] got rid of.

Q. They did sell some of the bonds of the California-Nevada Copper Company, did they?

A. I imagine they did.

Q. That was the method you had of raising money, by the sale of the bonds of the California-Nevada Copper Company?

A. As I told you, I had nothing in reality to do with the raising of the money at all after the receivers were appointed; as I told you, they sent for me to go back there in March, 1911, to see if I could not convince these people there that these suits were

(Testimony of J. R. Winn.)

not so scarry as the news had been circulated; we had meetings with prospective buyers, and we had meetings with parties who wanted to know whether the suits were real or not; you cannot go on the market and get money when there is a scare on.

Q. I will ask you this question, Judge, were you trying to raise money by the sale of the bonds of the California-Nevada Copper Company?

A. I wasn't selling any bonds; I never did sell any.

Q. Well, did the people who sent for you and for whom you were acting, were they trying to raise money by the sale of bonds of the California-Nevada Copper Company?

A. I told you three or four times they were trying to sell bonds.

Q. The bonds of the California-Nevada Copper Company?

A. Bonds issued under this mortgage; whether it is the Alaska-Ebner Gold Mines Company or the California-Nevada Copper Company, I don't remember.

Q. But it was those bonds anyway by the sale of which they were trying to raise money?

A. I have told you that a dozen times—yes.

Q. And those bonds were secured by that mortgage—that is right, [1124—974] isn't it?

A. I presume they were; I don't know what the mortgage is given for; I never went into that thing in detail.

Q. Well, how were you trying to raise money when you went back to New York the next time?

(Testimony of J. R. Winn.)

A. Well, the receivers were seeking a reorganization, dealing with the Barauch Brothers particularly; the receivers and myself had quite a little dealing, and were in hopes that Barauch Brothers would take the property over.

Q. Trying to sell the property at that time, were you?

A. Trying to reorganize it and put it on its feet; we were trying to convince them that the Ebner Company was not in such a bad shape, because this mortgage was only covering a small amount of its stock, and we thought we had the deal put through with Barauch Brothers, and they sent some inquiry out here and learned about these suits and then they dropped it, and I think when I went back there the second time the Chapman committee were trying to raise money too.

Q. Now, let's see; you went back and were trying to convince them, you say, that the Ebner Gold Mining Company was not in such bad shape because only a small portion of its stock was covered by this mortgage—is that right?

A. I wasn't trying that; I was trying to get the scare out of them on these suits—that was one of the things I went back there for.

Q. For how much money was this mortgage given?

A. Well, now, I don't know.

Q. Approximately how much?

A. I don't know.

Q. Several million dollars, wasn't it?

A. I don't know. [1125—975]

(Testimony of J. R. Winn.)

Q. The fact, however is, Judge, that the mortgage was so immensely large that the property covered by it wasn't anywhere near worth the stock for which the mortgage was given—isn't that true?

A. No one gave me any such excuse as that for not taking hold of the property.

Q. And the mortgage only covered a small portion of the stock of the Ebner Company?

A. I think it did when I made that second trip back there.

Q. Only 30 per cent of the stock of the Company?

A. I wouldn't say what per cent—it was less than half.

Q. And the excuse that they gave you for not being able to raise the money was because there were so many suits pending up in the Alaska courts—is that right? A. Yes, sir.

Q. Now, Judge, when was the first suit commenced? A. Well—

Q. I will ask you a leading question—wasn't the first suit commenced on the 21st day of August, 1910, the first suit relating to any matters up here at all?

A. I forget; the record will show; I think probably the first suit commenced was that pleading that you offered in evidence.

Q. The first suit that was commenced in relation to any of these matters was commenced by the Ebner Gold Mining Company vs. the Ebner-Juneau Gold Mining Company, wasn't it?

A. Yes; to prevent you from going on and locating

(Testimony of J. R. Winn.)

claims over our claims.

Q. The first suit was to prevent the Alaska-Juneau Company from appropriating the water of Gold Creek, wasn't it?

A. Why, the complaint is there, and it will show; if you will show me the pleading I will tell you.
[1126—976]

Q. That was the object of this first suit, wasn't it, to prevent the Alaska-Juneau Company from appropriating the water of Gold Creek?

A. I think that first suit was a suit to enjoin you people from trespassing upon some of the property owned by the Ebner Gold Mining Company—the complaint will show.

Q. Hearing was had upon an application for an injunction in that suit, wasn't it?

A. I think Mr. Burton attended to that first hearing—there are so many of these I can't tell which is which.

Q. Wasn't it this way, Judge—didn't you personally prepare the papers, and Mr. Burton attended the first hearing and made the first application for a preliminary injunction, which was denied by Judge Lyons, and then did you not return to town and make a second application for an injunction which was also denied by Judge Lyons?

A. If that is the case I attended one hearing—I don't know whether that is the case or not—the record will show—I think that is right, he denied our injunction; there are ten suits here; we did bring a suit in ejectment to get you off of the Lotta and

(Testimony of J. R. Winn.)

the Parish No. 2 claim, and that suit, I think, was commenced to follow out our remedy and try to get the relief we tried to get in the other suit; now, there are ten of these suits—

Q. The first one was a suit for an injunction brought by you and the injunction was denied, and then you commenced a suit over the same subject matter in ejectment, didn't you?

A. Yes; and ejected you from the Lotta claim.

Q. You brought a suit in ejectment then to eject us from the Lotta and the Parish No. 2?

A. Yes, sir. [1127—977]

Q. That was another suit brought by the Ebner Gold Mining Company against the Alaska-Juneau Company, wasn't it?

A. That is the suit that you have pleaded in this case in your reply.

Q. That was the second lawsuit that was brought between these companies, was it not?

A. Well, now, you will have to look at the records to find out.

Q. Give me the best recollection you have on that, Judge?

A. No, I won't testify on it because the records are right here.

Q. Isn't it a fact that the first two lawsuits, at least, were brought by the Ebner Company against the Alaska-Juneau Company?

A. We had to do it to get you people off the property.

Q. You brought them, didn't you?

(Testimony of J. R. Winn.)

A. I don't know whether the first two suits were brought by us or not; we did bring the two that you have mentioned.

Q. In the first one you didn't get the relief you sought and then you brought another one to get it, didn't you? A. I think I told you that.

Q. In the second suit it was shown that a small portion of the Alaska-Juneau Company's dam extended over and slid over onto the Lotta claim on one end, didn't it?

A. It showed that you had filed your Oregon lode claim over the Lotta and you had filed your other claim over it; that is, the same suit declared that both of those locations were invalid and left us the Lotta claim. Now, as to the extent that that dam was over onto the Lotta claim, I don't know anything about it any more than you do, which I got from the testimony and evidence, and which resulted in Judge Cushman's order and decree, which stands before the Court in your reply in this case. [1128—978]

Q. The relief you asked for, as far as it related to the Parish No. 2 was denied you in that judgment, wasn't it?

A. The judgment will speak for itself.

Q. You know, don't you?

A. Well, there is a question.

Q. Anyhow, Judge Cushman held that *you* Parish No. 2 claim, which you relied upon as one of the pieces of property from which you wanted to eject us, and upon which the entire flume of the Alaska-

(Testimony of J. R. Winn.)

Juneau had then been built, was not a valid location?

A. The judgment is there before Judge Jennings.

Q. You were not granted relief then, that you testified to a minute ago in response to a question that did not call for such an answer, did you?

A. You were asking me the relief that was granted in that suit, and I was giving you the whole relief, the findings of the court and the judgment; that was the ultimate result of that suit, and there is a finding there on all three of the claims as to the legal effect of it, and I presume that will be determined by this Court in this suit.

Q. But in any event that case was tried out, and whatever the decree of Judge Cushman was it was appealed from and affirmed, was it not?

A. It was appealed and reversed—there are a number of causes in regard to the Parish claim; however, that is pleaded here in your reply, and is before the Court in your reply.

Q. What is the next suit that the Ebner Gold Mining Company brought against the Alaska-Juneau Company? A. I couldn't tell you, sir.

Q. Now, what are the suits that were brought by the Alaska-Juneau Company against your Ebner Company? [1129—979]

A. Well, they are here.

Q. What is the first suit?

A. I think I can give you a list of them.

Q. The first suit that was brought was an action brought to enjoin you from breaking up the flume on the Oregon claim on the flume grade of the

(Testimony of J. R. Winn.)

Alaska-Juneau Company, wasn't it?

A. I couldn't tell you without looking at the record.

Q. You answered that in response to Mr. Burton's question, didn't you?

A. He handed me the papers to look over.

Q. Such a suit was brought about that time, wasn't it?

A. I think there was a suit brought while we were working on what is called the Parish claim; you brought a restraining order; I think, on that same proposition that you had some of the parties arrested and they were afterwards dismissed.

Q. That restraining order was granted by the court—that injunction was granted, wasn't it?

A. You will have to look at the records.

Q. Don't you know whether that injunction was granted or not?

A. I know this about it that we stopped work—we had to stop work on that place, and we did stop work; I don't remember the order of the court.

Q. Another suit was brought against you, an action to quiet the title to the Oregon claim, wasn't it?

A. Well, the records will show; if you will show me the papers I will tell you.

Q. The Alaska-Juneau Company were claiming the piece of ground under the Oregon location that you were claiming under the Parish, were they not?

A. I don't know anything about that. [1130—980]

Q. You don't know, Judge Winn, that the Alaska-

(Testimony of J. R. Winn.)

Juneau Company were claiming the ground under the Oregon location that you were claiming under the Parish?

A. Why, if you will present me the papers—I cannot go over these ten suits and tell you what it contains in each one unless I have the papers.

Q. I didn't think there were ten suits?

A. I have ten here; if you want the names, why, the Alaska-Juneau Company against the California-Nevada Copper Company—

Q. I wish you would give them to me commencing with the first date?

A. I will not give them to you that way because I haven't the information.

Q. I want the cases in the order they were brought.

A. I won't give them to you; you have got to select them yourself.

The COURT.—Well, the cases were brought in the order in which they were numbered; give him the earliest number—begin with the smallest number.

A. It seems like this is the first one I have of record here—803 is the lowest I observe on this list; that is the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company; and the next is 804, which is Tripp against the Alaska-Juneau Gold Mining Company; 812, which is the Alaska-Juneau Gold Mining Company vs. Angus Mackay, Behrends and others; 823, is the Alaska-Juneau

(Testimony of J. R. Winn.)

Gold Mining Company against the California-Nevada Copper Company and the Ebner Gold Mining Company; 826 is the Alaska-Juneau Gold Mining against the Ebner Gold Mining Company; 828 is the Alaska-Juneau Gold Mining Company against the Ebner Gold Mining Company and others; the record I have in my hand don't show how many [1131—981] it is against; 835—I think that is the appealed case, the one we have been talking so much about—is the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining; 938 is the Alaska-Juneau Gold Mining Company against the Ebner Gold Mining Company; and 939 is the same title.

The COURT.—Is that all?

A. That is all I have; I didn't prepare this myself.

Q. Now, those last two cases, let us speak of those first—those last two cases are adverse suits brought by the Alaska-Juneau Company to adverse a patent location made by you to the Parish No. 2, aren't they? A. I think they are.

Q. That patent application was made by you when? A. I do not know.

Q. When were the adverse suits commenced?

A. I don't know.

Q. They are comparatively recent suits, aren't they?

A. I cannot tell you without the records.

Q. The patent application was made after the decision of Judge Cushman to the effect that the Parish was an invalid location?

(Testimony of J. R. Winn.)

A. I don't know that; I didn't tax my memory with it.

Q. You don't know when those suits were brought with reference to the decision of Judge Cushman?

A. I don't—I didn't tax my mind with it.

Q. You do know, however, that the adverse suit was brought against the patent application that you have made, don't you?

A. I answered that once.

Q. 812—that is a suit for a fraction of ground near the Ebner dam that was located by the Alaska-Juneau as the Russell lode claim and by your people as the Fractional placer, isn't [1132—982] it?

A. There is such a suit—what the property is I don't know.

Q. That is one of the suits?

A. That is one of the suits.

Q. It is still pending? A. It is still pending.

Q. And the other cases have been practically disposed of under the decision of Judge Cushman?

A. I must say that they are here, and the record is here and speaks for itself; I don't know whether I will want to prosecute these suits or not.

Q. What cases have you still to prosecute against the Alaska-Juneau Company?

(Not answered because of objection.)

Q. Well, Judge, there are some cases pending yet, you think, that have not been disposed of by Judge Cushman's decision?

A. I haven't looked into the issues of those cases, Mr. Hellenthal, to see what is going to be done with

(Testimony of J. R. Winn.)

them; I don't know, and wouldn't commit myself, because I haven't examined the issues of those cases for more than a year.

Q. You know this, Judge, that the case brought by the Ebner Company against the Alaska-Juneau Company involving the Parish No. 2 involved practically the same issues as the case brought by the Alaska-Juneau against the Ebner concerning the Canyon lode, and the case brought by the Alaska-Juneau against the Ebner Company concerning the Oregon lode—they are all practically the same, and a decree in one case will settle a whole lot of cases bearing upon the same issues—isn't that right?

A. I told you I hadn't examined those pleadings, and I wouldn't undertake to tell you, unless you hand me the papers, what [1133—983] is at issue; I haven't seen them for over a year, and I wouldn't know what any of these papers contained unless you direct my mind to some case that has been tried; I have never looked over the papers to conclude what is going to be done with them.

Q. Will you, when court adjourns, look over these and see?

A. If you will present the papers to me, Mr. Helenthal, and go over them with me I will try and give you the information you want, but I won't go through them at adjournment, because I haven't time—I have too much other business to attend to.

(Whereupon court adjourned until 10 o'clock tomorrow morning.)

(Testimony of J. R. Winn.)

MORNING SESSION.

August 6th, 1914, 10 A. M.

J. R. WINN, on the witness-stand.

Cross-examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. You remember, Judge, that after the injunction suit was brought by the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company, which was brought to enjoin the Alaska-Juneau Company from going upon the ground which the Alaska-Juneau Company claimed under the Oregon location and which the Ebner Company claimed under the Parish location—after that injunction hearing was had, you remember that the Alaska-Juneau Company then brought the two suits to quiet title against the Ebner Company, one was to quiet title to the Oregon claim and the other was to quiet title to the Canyon, which was an adjoining claim to the Oregon—you remember [1134—984] that, don't you?

A. If you will call the number of the—there are two suits of that kind, Mr. Hellenthal—if you will show me the papers or let me see the papers I could very closely tell you; I haven't burdened my mind with all the facts of those pleadings.

Q. Judge, I now call your attention to the suits 826-A and 828-A—I think you will find those to be Oregon and Canyon cases.

A. Yes; 828-A is a suit brought by the Alaska-Juneau Gold Mining Company against several defendants, including the Ebner Gold Mining Com-

(Testimony of J. R. Winn.)

pany, Mackay, and so forth; it is in the nature of a suit to quiet title to the Canyon claim—that is 828-A.

Q. And 826-A is to the Oregon claim, isn't it?

A. Yes; that is a suit of the Alaska-Juneau Gold Mining Company against Angus Mackay and some other defendants, including the Ebner Gold Mining Company.

Q. To quiet title to the Oregon claim?

A. I cannot ascertain from your complaint which one of the Oregons you mean.

Q. It is one of the Oregon claims?

A. It is one of the Oregon claims; I cannot tell whether it is the Datson or Corbus.

Q. It is the same ground covered by those two claims anyway, isn't it?

A. The ground, I think, is about the same.

Q. After the bringing of these cases, the Ebner Gold Mining Company brought 835-A, which is a matter of ejectment that includes the ground covered by both of these cases, does it not, the Lotta and the Parish?

A. That suit in ejectment was to eject the Alaska-Juneau Company from the Lotta and the Parish No. 2; and, of course, [1135—985] it included, I don't know how much of your Oregon—it must have included all of your Canyon; I am not sure about that.

Q. It included a large portion of the Oregon and the whole of the Canyon, didn't it?

A. It covered such portion of it as Mr. Wettrick's

(Testimony of J. R. Winn.)

testimony will disclose; the Parish No. 2 or the Lotta, I don't know how much it covers.

Q. The suit over your title is only over one of the claims—you didn't bring two suits, but only one suit, did you? A. Yes.

Q. And here we have practically the same thing covered in two suits?

A. I don't know how much of the Oregon is outside the Parish.

Q. Outside of that part of the Oregon that conflicted with the Parish and that part of the Canyon that conflicted with the Lotta or the Parish—that was all litigated in this case, 835-A, wasn't it?

A. Yes; that is true, but whether or not there is any part of the Canyon or Oregon outside of the Lotta and the Parish No. 2 I am not able to state; that is the reason I am unable to state whether these two suits now pending ought to be dismissed or not?

Q. One of the defenses, if you will remember, set up to your suit 835-A, referred to another action pending with reference to these suits, didn't it?

A. Judge Jennings has the pleadings before him and can see what was set up under the pleadings.

Q. You recollect the fact that that defense was waived and we went to trial in 835-A so that the issues might be tried in that case? [1136—986]

A. There was some kind of a waiver, but just the exact extent of it, I couldn't say at this time; the records will disclose.

Q. Then that case went to trial, didn't it?

A. Yes; that suit evidently was tried.

(Testimony of J. R. Winn.)

Q. And there was nothing more done about that litigation up to date?

A. I don't know; I don't think there has been much done in these two suits you have just referred my attention to; I don't know but what they are at issue—no, these cases have not been tried.

Q. I now call your attention to cases 938-A and 939-A—do the complaints show when those were filed, Judge?

A. The summons was issued in 939-A on the 1st day of August, 1912.

Q. And the other suit, 938-A, was the same thing, wasn't it? A. 1st day of August, 1912; yes.

Q. Those are the two cases that you referred to yesterday, which were adverse suits filed in the land office, brought to adverse the Parish No. 2 location made by the Ebner Company, aren't they?

A. I don't know without looking whether these are both adverse suits or not.

Q. One is the Corbus-Oregon and the other is the other Oregon, isn't it?

A. Yes; you are claiming in suit 938-A under the Datson location of the Oregon, which was made on the 20th day of July, 1910, for whatever relief you are asking; I thought you probably commenced those suits and then filed an adverse and amended your pleadings in them, but I am not sure of that; you rely on the Datson claim for whatever relief there is in that suit; the other suit you plead the location made of the [1137—987] Oregon claim by J. P. Corbus on the 31st day of October, 1899.

(Testimony of J. R. Winn.)

Q. They are both suits to quiet title to the ground, one under the Corbus and the other the ground embraced within the Datson Oregon and are both brought pursuant to adverse filed in the land office upon application for patent of the Parish No. 2.

A. I think you filed an amended complaint in this one.

Q. I think not, Judge.

A. Yes; 839-A, you have evidently got attached here to your pleadings—I think those grew out of that adverse claim; anyway, you are claiming title under those two locations.

Q. And they were brought right after the adverse was filed in the land office on the application for patent of the Parish No. 2—in the land office, weren't they?

A. Oh, not within the statutory time—I suppose they were filed; I don't know; Mr. Burton filed his answer and he may have raised the point that you didn't file them in time, but they were filed, I think, on some adverse claim—that is my understanding without going through the pleadings, if I am not mistaken.

Q. Now, as to the other case, 812-A, directing your attention to that, that is the litigation over the piece of ground up near the Ebner dam which is claimed by the Alaska-Juneau Company under the Russell lode claim and by the Ebner under the Fractional location; is that right?

A. Yes; you are claiming title under the Russell lode claim.

(Testimony of J. R. Winn.)

Q. That is a suit to quiet title that has not been disposed of?

A. No; this case has not been disposed of. [1138—988]

Q. It is still pending? A. It is still pending.

Q. The other case No. 823-A, entitled the Alaska-Juneau Gold Mining Company against the California-Nevada Copper Company—that is the case you referred to as being the suit brought by the Alaska-Juneau Company to enjoin the dumping of rock on the flume line that was then in course of construction, is it not?

A. Yes; you predicate your title on one of the Oregon claims, and the prayer of your complaint asks that the California-Nevada Copper Company, and the Ebner Gold Mining Company and other defendants be restrained from destroying your flume line.

Q. In that case an injunction was issued by the Court, was it not, Judge?

A. I will have to look over the records, Mr. Hellenthal; the record will disclose it; if you say there is a restraining order in there it will save the trouble of looking through it.

Q. Now, those were the only cases pending between the parties you have referred to, were they not?

A. I don't know whether you have gone over that whole list or not, Mr. Hellenthal, without I had the list here.

Q. You cannot think of any others, can you?

(Testimony of J. R. Winn.)

A. How many have you got there, nine suits?

Q. Nine suits.

A. Oh, that is the nine I mentioned yesterday; I think those are the ones I have reference to.

Q. I have called your attention to all the papers and suits that are now pending between the companies, haven't *it*?

A. All that I remember just now. [1139—989]

Q. That is the litigation to which you have referred? A. Yes.

Q. Judge, just let me ask you to identify this mortgage to which you have referred, calling your attention to the records of the Juneau Recording District, page 351 of Book B of Mortgages, where a mortgage is recorded from the California-Nevada Copper Company to the Standard Trust Company of New York and Edward M. F. Miller, Trustee, mortgage or deed of trust, dated December 15th, 1907—is that the mortgage to which you referred yesterday in your testimony?

A. That must be the one, I don't know of any other mortgage except one that is on record here; I have never examined the record to ascertain; I had a copy of it sent me; I only know one such mortgage in existence.

Q. Then, to the best of your knowledge, that is the one? A. I suppose so.

Mr. HELLENTHAL.—I will offer this in evidence as part of the cross-examination of Judge Winn.

(Testimony of J. R. Winn.)

(Whereupon said mortgage from the California-Nevada Copper Company to the Standard Trust Company of New York, as appearing in Book B of mortgages, pages 351, 352, 353, 354, 355, 356, 357, 358, 359, 360 and part of 361, was received in evidence and marked Plaintiff's Exhibit No. 39.)

Mr. HELLENTHAL.—That will be all the questions.

Redirect Examination.

(By Mr. BURTON.)

Q. Do you know, Judge Winn, what amount this mortgage is given for?

A. I didn't *off* the amount; it will show in the mortgage, but I do know this, that there was only \$750,000.00's worth of [1140—990] bonds sold under that mortgage.

Q. You know there were only \$750,000.00's worth of bonds sold?

A. Something less than \$750,000.00's worth of bonds sold under that mortgage.

Q. Does this mortgage cover any other property than the stock of the Ebner Gold Mining Company?

A. I suppose it shows for itself in there, if it does.

Q. Mr. Hellenthal questioned you about cause No. 938-A—I will ask you if you know whether or not that suit was brought subsequent to the decision of Judge Cushman in 835-A.

A. I am of the opinion that it was; the judgment, however, of Judge Cushman that you have reference to is set up in the reply of Mr. Hellenthal in this case we are trying now; it is my opinion that this suit

(Testimony of J. R. Winn.)

was brought after that decision was rendered.

Q. What is the date that that suit was brought?

A. The date of the summons is August 1st, 1912.

Q. Isn't that suit, Judge, an adverse suit brought in support of an adverse filed in the land office; doesn't it so state in that complaint?

A. Yes; it is brought on an adverse claim—it is stated in the pleadings; the adverse claim claims to have been filed on the 17th day of July, 1912.

Q. And that complaint sets up the Datson Oregon and also the Corbus Oregon, does it not, or just one of the Oregons?

A. I think this only sets up the Datson Oregon, and the other one that Mr. Hellenthal called my attention to set up the other one, I think.

Q. Was the Datson Oregon involved in cause No. 835-A, decided by Judge Cushman?

A. Yes; the same Datson claim that is referred to in Mr. Hellenthal's [1141—991] reply, and which is referred to in Judge Cushman's findings and decision in that case.

Q. Do you remember from your recollection, Judge, whether or not in the answer in cause No. 835-A the Datson Oregon and the Corbus Oregon were set up as a defense against the Ebner Company's claim to the Parish No. 2?

A. Judge Cushman passed upon both of those locations in his decision; those claims are set up in the answer and they are referred to in Judge Cushman's opinion and findings; that is all pleaded in Mr. Hellenthal's reply in this case we are trying now—

(Testimony of J. R. Winn.)

the pleadings are all set up in this case.

Q. Those matters are a part of the allegations set up in the reply in this cause, are they not, Judge—the matters and the findings of Judge Cushman?

A. Oh, yes; in the reply in this case.

Q. I will now hand you the papers in cause No. 939-A—Mr. Hellenthal asked you a while ago if that is not a suit to quiet title and not a suit in support of any adverse filed in the land office?

A. Yes; that is true—I thought it was one of these suits that we claimed under that head; it is a suit to quiet title to the J. P. Corbus Oregon lode claim, location made the 31st day of October, 1899.

Q. Do you know, Judge, whether or not that is the same Corbus Oregon claim that Mr. Bradley testified to in this case as having been abandoned in 1904?

A. It is the one he testified concerning.

Q. Answering Mr. Hellenthal's question that he propounded to you, you stated something about Mr. Hoops having advanced some money—who was Mr. Hoops—at that time had he any [1142—992] connection with the company?

A. Yes; Hoops was, I think, a creditor stockholder and bond holder.

Q. Now, I will hand you papers in cause No. 803-A and ask you to state to the Court just what that suit is, the date of the complaint and the cause of action?

A. This is a suit that was brought, which Mr. Hellenthal has referred to, asking for a restraining order, brought by the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company

(Testimony of J. R. Winn.)

and some other defendants; the Ebner Company sets up a lot of mining claims which they claim to be the owner of—I don't know how many of these claims it sets up are referred to in Defendant's Exhibit "S" in the case we are trying now, but it sets up quite a number of those claims—at least all the patented ones and some of the unpatented claims; then it claims that the defendant was trespassing upon this property, and refers to the fact of the posting of the L. D. Mulligan notice, and other matters of trespass upon this property belonging to the company, and asks for a restraining order restraining the Alaska-Juneau Company from continuing such trespass; the complaint was sworn to on the 25th day of August, 1910, and it was filed on August the 25th of the same year.

Q. Did you draw up that complaint, Judge Winn, do you remember?

A. I don't know; I rather think I did.

Q. Is that the same Mulligan notice which is referred to and which has been testified to in this case?

A. It is the same one.

Q. Do you remember, Judge Winn, whether or not you attended to the first hearing in that cause Mr. Hellenthal questioned you about?

A. Where was that first preliminary hearing had?
[1143—993]

Q. In Juneau, or did I attend that first hearing?

A. There was one hearing heard on a restraining order in Ketchikan, and I am somewhat befuddled on the two.

(Testimony of J. R. Winn.)

Q. I will ask you, Judge Winn, whether or not you remember attending the final hearing in that case, when Judge Lyons suggested that we bring an action of ejectment?

A. I remember that he had a copy of Judge Lyons' decision in that case; I don't remember whether he filed a written decision or not, but it was taken down by the stenographer and we preserved it; he held that our remedy was at law, ejectment, and he would not grant the restraining order.

Q. I will hand you the papers in case No. 812, and ask you to give the date and state as near as you can remember what the cause of action is?

A. This is the suit that Mr. Hellenthal referred to as brought by the Alaska-Juneau Gold Mining Company against the Ebner Company, Mackay and others to quiet title to the Russell lode claim, and the Ebner Company is claiming that ground under the Fractional placer claim that has been referred to in the testimony in this case.

Q. The Fractional placer claim? A. Yes.

Q. What claim do they set up there?

A. The Alaska-Juneau, they set up the Russell quartz claim.

Q. You heard the testimony in this case that the Fractional placer claim had been located quite a number of years ago?

A. Yes; I heard the testimony—however, it is more in the form, I think, of a location notice you offered on that claim.

Q. There is in evidence, a location notice?

(Testimony of J. R. Winn.)

A. That is the location notice.

Q. I will ask you if you know whether this Russell claim that is asserted against the Fractional claim in 812-A, covers [1144—994] the same ground, or part of the same ground, as the Fractional placer?

A. That is our defense in the case—we claim that.

Q. You know, do you, when this Russell lode claim was located?

A. That claim was located by the Alaska-Juneau Company sometime, I think, the latter part of September, 1910; that is, located, as I understand, for them; I don't know whose name it is located in; they are claiming it is their property in this pleading.

Q. It was located the latter part of September, 1910?

A. I think so; yes—to the best of my knowledge.

Q. Where is this so-called Russell claim with reference to where Harri's tent was pitched in October, 1910?

A. I think that is the claim that Mr. Kinzie testified that they sent him up to to have the tent put on, as appears in the testimony in this case.

Q. Do you know anything about the grade of the Ebner Company in September, 1910, of your own knowledge?

A. Oh, I was up there a lot of times, but I don't remember exactly as to the date; I testified that I posted that water location of the Ebner Company on the 17th of August, and I stated what I saw then was done.

Q. I will hand you the papers in 823-A and ask

(Testimony of J. R. Winn.)

you the date of the bringing of that suit and the cause of action?

A. This is the suit that I answered Mr. Hellen-thal's question in regard to, that was brought to restrain the California-Nevada Copper Company and the Ebner Company from dumping on the flume of the Alaska-Juneau Company; they seemed to be claiming title, or the allegations are that they were claiming it under the Oregon claim.

Q. Do you remember the testimony in the case with reference to a tunnel below which this particular grade set forth in [1145—995] this action is situated?

A. That is the tunnel that Mr. Wettrick testified they were working on that caused the arrest.

Q. And they were working on that prior to the time the grade reached that point and prior to the time they put in their flume there, were they?

A. His testimony there will say, I don't remember it in detail.

Q. I will hand you the papers in 826-A and ask you to give the date of the complaint and also state briefly what is the cause of action?

A. I did give the date of this one to Mr. Hellen-thal when he asked me about the filing of the complaint, and this is the one that I identified to Mr. Hellen-thal as being the suit brought by the Alaska-Juneau Gold Mining Company against Mackay and the Ebner Gold Mining Company and others to quiet title to one of the Oregon claims—whether it is the

(Testimony of J. R. Winn.)

Datson or Corbus does not appear upon the face of the pleadings.

Q. That was in 1910—November 17th, 1910?

A. That is the date.

Q. I will now hand you the papers in 828-A, and ask you to state briefly what that cause of action is, and also the date of bringing that suit?

A. The complaint was filed on November 21st, 1910; it is a suit by the Alaska-Juneau Company against the Ebner Company and others; the plaintiff claims title under the Canyon lode claim, and asks to quiet title to it.

Q. Now, the papers in 835-A—that is the ejectment suit, is it not, that has been referred to several times in this case?

A. Yes; that is the ejectment suit we brought after Judge Lyons denied the restraining order in the other suit, and that is [1146—996] pleaded in the reply of Mr. Hellenthal in this case that we are now tryng.

Q. I will ask you, Judge Winn, whether or not in cause 803-A, which was brought August 25th, 1910, you remember whether they asserted title to either one or both of the Oregon claims?

A. No; I don't remember, without seeing the pleadings, Mr. Burton. There are so many of these papers.

Q. I will hand you the answer and ask you to which Oregon they assert title in that case?

A. By a short examination of the pleadings I see

(Testimony of J. R. Winn.)

nothing of any Oregon claim mentioned in there except the one that was located by Corbus in 1899; it is a long pleading, but in running through it I didn't see any other Oregon claim.

Q. Now, you testified regarding the Tripp case, 804-A—I think you said that Tripp took up certain claims as trustee for the California-Nevada Copper Company and the Alaska-Ebner Gold Mines Company in connection with the Ebner Company's property—is that true?

(Objection and question not answered.)

Q. And those claims have since been conveyed to the Company, have they not?

A. The Taku Queen is one; Mr. Tripp brought that suit based upon the Auk Chief and the Alice placer claims; those are the same claims that are mentioned in that deed of Mr. Tripp's, which has been deeded to the Ebner Gold Mining Company.

Q. Now, Mr. Helenthal asked you in cause 835-A, if we didn't strike out, I believe, certain causes of action—do you remember about that?

A. He asked me some question like that.

Q. Now, Judge Winn, I will ask you if you stated that this litigation [1147—997] that you have referred to, that you know of your own knowledge interfered with the raising of money to carry on this work—I will ask you if there is anything else you know of that also had an effect of interfering with the raising of money to carry on the work?

A. Of course, I said the litigation, and then the title was clouded—these claims had been filed over

(Testimony of J. R. Winn.)

the Ebner property and had clouded the title, and of course whether the suits were meritorious and what the outcome would be is a matter that has to be considered when you are raising money; it is a difficult matter to raise money when the title is clouded and suits are pending.

Q. Do you know of any particular instance that occurs to your mind where this litigation was retarding the obtaining of money for the purpose of carrying on the work?

(Question objected to.)

The COURT.—It would not be redirect, but if you wish to direct his attention to that particular point you may ask him the question, but it will be considered as his examination in chief and will be subject to cross-examination again.

A. Why, it was on a great many occasions that I could point out, of course.

Q. I would like you to mention one instance, if you remember a single instance, that occurred while you were back in New York.

A. I remember an instance while we were dealing with Barauch Brothers, Mr. Martin, who was receiver then, and Mr. Smith—that was before the appointment of the receivers in the foreclosure proceedings and the proposition of the reorganization of the company on the plan we had decided—that concern seemed to be agreeable and everything was all right to all parties until the matter of the title came up, and it broke [1148—998] off all further negotiations.

(Testimony of J. R. Winn.)

Mr. BURTON.—I think that is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Judge, just a question, that adverse suit that Mr. Burton was inquiring about, that adverse suit between the Oregon and the Parish—that second adverse suit, the complaint does substantially state that it was brought pursuant to an adverse in the Land Office—you know that as a matter of fact, don't you?

A. I don't know any more than what the pleadings show, Mr. Hellenthal; the fact is, Mr. Burton has practically had charge of those two cases, and I would have to look at the pleadings to be sure of that.

Q. You have no personal familiarity with those cases?

A. I have no familiarity with those two suits; Mr. Burton has had charge of them.

Q. The opinion that you referred to, of Judge Lyons, upon the subject of this injunction is the one that is found in the record of the case of 803-A, marked here "Oral Opinion," is it not—that is a transcript of that opinion, isn't it?

A. That is the one—you undoubtedly have got the certificate of Mr. Robertson, the reporter—that is the only opinion in cause 803-A, and I think that is a transcript of it.

Mr. HELLENTHAL.—I offer that in evidence, if your Honor please, the opinion of Judge Lyons

(Testimony of George R. Noble.)

which the witness has referred to in his examination.

(Whereupon said opinion was received in evidence and marked Plaintiff's Exhibit No. 40.)

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1149—999]

Mr. BURTON.—In connection with the testimony of Judge Winn in which he states that the opinion of Judge Lyons resulted in bringing the action No. 835-A, I desire to offer in evidence the opinions of Judge Lyons—there was one opinion at the time the order to show cause was presented, and another one at the time the preliminary hearing was had.

The COURT.—Both the opinions of Judge Lyons in cause No. 823-A will be admitted.

(Whereupon said opinions were received in evidence and marked Defendant's Exhibit "I-2.")

Mr. HELLENTHAL.—I believe that opinion is given in 803-A, 804-A and 823-A?

Mr. BURTON.—That is correct—the cases were consolidated. [1150—1000]

The defendant, to further maintain the issues on its part, introduced as a witness GEORGE R. NOBLE, who first being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of George R. Noble, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Your name is George R. Noble? A. Yes.

Q. Where do you live now, Mr. Noble?

(Testimony of George R. Noble.)

A. Juneau.

Q. How long have you been making Juneau your home? A. Two years.

Q. Where were you living prior to that time?

A. Boston, Massachusetts.

Q. Mr. Noble, when did you first have anything to do with any dealings concerning the property of the Ebner Gold Mining Company?

A. In 1910—the early part of 1910.

Q. Were you in Alaska at that time, or in the east?

A. I was in the east.

Q. Just state briefly to the Court what connection you had with the business of the Ebner Gold Mining Company, the Alaska-Ebner Gold Mines Company, or either of them, that have been connected with this property that is indicated on Defendant's Exhibit "S"?

A. At that time I became a bondholder of the company, and was soliciting money to carry through its plans—primarily interested in soliciting money to carry its plans to completion. [1151—1001]

Q. To carry through what plans, Mr. Noble?

A. At that time the plans were to build a 200-stamp-mill and to operate the Ebner mine.

Q. You have heard the testimony in this case, haven't you, Mr. Noble? A. Some of it.

Q. To open it up on the plans that have been testified to in this case?

A. That I believe were the plans; yes, sir.

Q. Now, you say you were a bondholder—were you a bondholder under this mortgage which Mr.

(Testimony of George R. Noble.)

Hellenthal has offered in evidence in this case?

A. I was.

Q. When did you first come to Alaska in connection with any business of the Ebner Gold Mining Company, or its properties? A. July, 1912.

Q. What was your purpose in coming here?

A. I was sent here representing a majority of the bondholders of the Alaska-Ebner Gold Mines Company to ascertain the true situation of affairs.

Q. To ascertain the true situation of affairs—you mean the condition of the property and everything connected with the affairs?

A. Everything connected with the details here.

Q. Had you been informed before you came here of any litigation that was pending or that was threatened against the property of the Ebner Gold Mining Company? A. I had.

Q. How long did you stay here in ascertaining the facts that [1152—1002] you were sent here to ascertain?

A. I think I left here, Judge, some time about the 10th of August, the following month—about six weeks, if I remember right.

Q. With whom, if anyone, did you go over the situation, so far as the details of the property were concerned at that time?

A. I went over the situation with you, and at that time made inquiries of Mr. Tripp and from anyone that I could learn anything particular about the property here.

(Testimony of George R. Noble.)

Q. You say you left here about what time?

A. About the 10th of August, if my memory serves me right.

Q. 1912? A. 1912.

Q. The property was then in the hands of receivers?

A. The property was in the hands of receivers; yes, sir.

Q. Now, I will ask you when you returned to the east, Mr. Noble, if there was any committees appointed or formed consisting of the bondholders for the purpose of looking towards the raising of money to do the work that had already been begun on this property? A. There were.

Q. Do you remember the names of the committees that were then at work on the proposition which I have just asked you about?

A. Yes, sir; there was the Chapman committee and the Cumnock committee.

Q. The Chapman committee, what would you say of its general efforts in regard to getting hold of the outstanding bonds?

A. Its final efforts were that it secured 97-7/10 per cent, if my memory serves me right, of the entire outstanding bonds of the Alaska-Ebner Gold Mines Company prior to the sale of this property. [1153—1003]

Q. Do you remember, Mr. Noble, approximately how many, or what amount of bonds were sold under this mortgage that Mr. Hellenthal has offered in evidence in this case?

(Testimony of George R. Noble.)

A. They were between seven hundred and seven hundred and fifty thousand dollars—not in excess of \$750,000.00 of bonds sold.

Q. Now, you spoke of some foreclosure sale that took place in New York, were you there when the sale took place?

A. I wasn't present when the sale took place.

Q. You were back east when the sale took place?

A. I was in New York at the time.

Q. Now, I will ask you over all the time from your first trip up here down to the present time, if you have been connected one way or another with this property of the Ebner Gold Mining Company?

A. I have represented the majority of the bondholders as their agent here, and I represent the Chapman committee at the present time.

Q. I will ask you, Mr. Noble, if you have ever disbursed any money in the carrying out of this plan of the opening up and development of the Ebner Gold Mining Company's property? A. I have.

Q. Do you remember about how much has been expended by you?

A. Approximately \$40,000.00—from the time it was turned over—do you mean directly on the Ebner property? About \$40,000.00 up to the first of November, when Mr. Muir was put in charge of the work and given the official superintendence of it.

Q. Do you know what the principal part of this expenditure that you made was for?

A. I can show what it was all made for; the principal part of [1154—1004] it was preparing and

(Testimony of George R. Noble.)

installing the machinery, purchase of supplies, getting ready to operate and driving this tunnel to open up these properties.

Q. What proportion of that amount, approximately, was expended in installing the new air-compressor at Shady Bend?

A. Installing the new air-compressor—do you mean just the installation of the air-compressor?

A. I mean the building, the installation of it and everything that is necessary to make it complete?

A. Approximately \$30,000.00; I can tell you exactly from my books; that is moving the machinery, and installing the pipe-lines and putting in foundations, and so forth—the general work of the installation of the plant.

Q. Do you remember approximately the time that this air-compressor was moved from Juneau up there and the installation of it commenced?

A. We started moving the machinery from the dock on the 27th of May, I think, Judge.

Q. What year? A. 1913.

Q. Now, up to that date you had been connected with the officers of that company both here and in the east, had you not, Mr. Noble? A. Yes, sir.

Q. I will ask you if you found out about the title and the number of suits that were commenced or threatened when you were here in 1912?

A. I did.

Q. And you found out some parts of the property were in controversy between the Ebner Company and the Alaska-Juneau Company, did you, Mr.

(Testimony of George R. Noble.)

Noble. A. I did. [1155—1005]

Q. Did you report all these matters when you went back east? A. I did.

Q. I will ask you whether or not these matters aided you in raising money, or were an obstacle in the way of raising money?

A. They were an obstacle—a decided obstacle.

Q. Before you came out here on that trip, I believe you stated you had heard about these suits?

A. Yes, sir.

Q. Was that any part of your investigation—that is, any part of the matters you were instructed to investigate? A. It was.

Q. I will ask you, Mr. Noble, to state some instance in which you were confronted with the condition of the title, and as to whether or not on such occasions these suits and the condition of the title were brought up and discussed; and, if so, what effect it had upon your being able to obtain any money?

A. At that time, or at practically all of the times since we have been raising money for this project, we have been confronted by all of our prospective purchasers with the question of title, or of lawsuits that were pending in Juneau with relation to water rights, and with relation to patented claims, which have been brought to our attention most forcibly; I remember a large banking house, Barauch Brothers, with whom I was in direct communication, and then another Harley Larned of New York—in all instances it has been largely discussed there, particularly through banking circles.

(Testimony of George R. Noble.)

Q. Did it in anywise interfere with your obtaining money to carry these things on?

A. It certainly has interfered with the obtaining of money. [1156—1006]

Judge WINN.—I think that is all.

Mr. HELLENTHAL.—No questions.

(WITNESS EXCUSED.)

(Whereupon an adjournment was taken until 2 o'clock P. M.)

AFTERNOON SESSION.

August 6th, 1914, 2 P. M.

The defendant, to further maintain the issues on its part, recalled as a witness GEORGE R. NOBLE, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Judge WINN.)

Q. Mr. Noble, this morning, I believe, you stated that the funds for installing the air-compressor where it is at present installed on the Cape Horn No. 2 lode claim was procured by you—that is, you paid out the money for that? A. I did.

Q. Now, I will ask you, Mr. Noble, if you know what time you got the pipe-line from the penstock connected up with the new air-compressor?

A. The 8th day of August was the last work we done on the pipe-line, and the water was turned in on the 10th day of August, 1913. [1157—1007]

Q. And applied to the new air-compressor?

A. Yes, sir.

(Testimony of George R. Noble.)

Q. Do you know what time, with respect to that date, that the Alaska-Juneau Company put its water down through its flume line down to its mill site here on the beach?

A. I think it was several days later.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Where did you get that idea, Mr. Noble?

A. Where did I get the idea?

Q. Yes. A. From observation.

Q. You remember a lawsuit between the Alaska-Juneau Company and the Worthen Lumber Company about that water, don't you?

A. I don't know that I have ever heard of such a suit.

Q. You have heard of such a suit—that suit was brought before that, wasn't it?

A. I don't know, sir.

Q. You don't know that the Alaska-Juneau Company had been using the water on the mill site long before August—that is, when I say long before, I mean a couple of months before, in ground sluicing and sluicing off the mill site? A. I don't know.

Q. You would not say that it is not a fact, would you?

A. I wouldn't say that it is a fact; I said I thought it was several days later, and you asked me where I got that information and I said from observation—that is my impression; I am not making a positive statement.

(Testimony of George R. Noble.)

Q. You wouldn't say that prior to that time the Alaska-Juneau [1158—1008] Company had not already had a series of litigation with the Worthen Lumber Company started because we were using that water on that hillside?

A. I won't, because I don't know.

Q. You are not willing to say that the Alaska-Juneau Company had not been using that water for a considerable time before August 10th, will you?

A. I am willing to say this, that as far as my observation went in the use of that water on the mill site by the Alaska-Juneau Company prior to the time we turned it into our air-compressor, that it had not been put to a commercial use in doing anything on that mill site. Now, you might have had the water running down from the mill, as you did for sometime; from natural observation it was running down over the hill, but was not accomplishing anything—any commercial purpose.

Q. You know from natural observation that it was running down from that hill before August 10, 1910?

A. I don't know the date that you turned the water on the hill down there.

Q. Do you know anything about the process of ground sluicing?

A. I think I know something of it; yes.

Q. Where did you have experience in ground sluicing? A. Here.

Q. Where? A. Salmon Creek.

Q. That is the only experience you have had?

A. I have seen other ground sluicing.

(Testimony of George R. Noble.)

Q. Ground sluicing—that is one operation to be carried on in connection with mining, isn't it?

A. I understand so. [1159—1009]

Q. You don't want to testify now that the Alaska-Juneau Company had not used this water in connection with ground sluicing on the hillside before August 1st, 1913, do you?

A. To the best of my knowledge I believe they had not applied that water to a good use or practical use in ground sluicing.

Q. You are not willing to testify, however, that they did not?

A. I stated to the best of my knowledge I believe it was not applied to ground sluicing as ground sluicing is generally done.

Q. But while you are willing to say to the best of your knowledge, you are not willing to make a positive statement that that water was not put to use prior to August 1st, 1913, are you?

A. I didn't make any positive statement; I answered the question just as I have answered it before.

Q. You are not willing to make that positive statement—is that correct, now?

A. I have answered your question, sir.

Q. My question, Mr. Noble, is this—you may have answered it, but I want the record to show clearly what you mean—while you are willing to say that to the best of your belief the water was not put to use prior to August, 1913, by the Alaska-Juneau Company, you don't testify positively that it was not put

(Testimony of George R. Noble.)

to use prior to that time—is that your testimony?

A. To the best of my knowledge I believe it was not put to use in the methods used in ground sluicing—in the proper method of ground sluicing, or to any practical use prior to that time.

(Question re-read.)

A. I answered the question.

Q. I insist that you answer the question. [1160—1010]

(Question re-read.)

A. That is my testimony.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Judge WINN.)

Q. Now, I will ask you, Mr. Noble, if that water was running down over the hillside out of the flume of the plaintiff company prior to August 10th—just state to the Court in what manner it was running down the hillside—was it being used by giants or was it being used through any flume; or was it just flowing out of their flume line?

A. To the best of my knowledge it was running down over the hill in one big stream—an overflow through their flume line.

Q. (By Mr. HELLENTHAL.) But it had been running down over the hill that you observed for some time prior to August, 1913, had it not?

A. I couldn't state definitely on that.

Q. You cannot state definitely on that?

A. I cannot fix that exact date.

(Testimony of John Perelli.)

Mr. HELLENTHAL.—That is all.

Judge Winn.—That is all.

(WITNESS EXCUSED.) [1161—1011]

The defendant, to further maintain the issues on its part to be maintained, introduced as a witness JOHN PERELLI, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of John Perelli, for Defendant.

Direct Examination.

(By Judge WINN.)

Q. Mr. Perelli, did you have anything to do with working around and installing the air-compressor of the Ebner Company up at Shady Bend, in July or August of last year? A. Yes, sir.

Q. What was your work?

A. I was in charge of the work as foreman.

Q. I will ask you if you remember the date that you connected up the penstock with that air-compressor by the pipe that goes down the hill?

A. That was completed on the 8th day of August, 1913.

Q. When did you apply the water to that new air-compressor up there?

A. Turned the water in on the 10th day of August.

Q. Now, I will ask you if prior to that time, or about that time, you were downtown and observed anything about the flume line of the Alaska-Juneau Company in and about where its mill is now?

A. Yes, sir.

(Testimony of John Perelli.)

Q. What, if anything, was being done with the water there?

A. The water simply was running down the hill.

Q. Running down the hill? A. Yes, sir.

Q. Do you know when Mr. Jones got his first giant and put it to work there?

A. I don't recollect the day; sometime the last part of August. [1162—1012] He asked me where he could get a giant to use it on there, to use striping and washing it off, and I told him to see Harry Bishop, he had one.

Q. That was some time in the last part of August?

A. Last part of August; yes, sir.

Q. Do you remember the first time that you saw that giant put to work down about where the Alaska-Juneau's mill is now?

A. Way late in August when I saw it down there.

Q. You have been mining for some length of time, haven't you—that is your business?

A. Yes; I have been mining the last thirty-five years—that is my business.

Q. Placer mining?

A. Yes; placer mining and quartz mining.

Q. I will ask you how that water up to and prior to the 10th day of August, was running down from the flume of the Alaska-Juneau Company?

A. Just run from the flume down the hill; and when the water runs down there once it gets clear to bedrock and it don't do any good for ground-sluicing.

Q. After it gets down to bedrock it will just keep running in that one channel? A. That is all.

(Testimony of John Perelli.)

Q. Is that the way you saw this water doing?

A. Yes, sir.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When was it that you saw this water running downhill—before you turned the water to your air-compressor?

A. I don't know what date; the water has been running for a long time around that flume there.

[1163—1013]

Q. Were you there every day?

A. Yes, sir; I was there every day.

Q. For how long a time were you up to the Alaska-Juneau mill site every day? A. Every evening.

Q. After work? A. Yes, sir.

Q. After work you went up there?

A. After work; yes, sir.

Q. After work? A. After my work.

Q. When was that? A. After six.

Q. And after six in the evening you saw the water running down the hill? A. Yes, sir.

Q. You don't know whether they were ground sluicing with that water all day in the daytime, or not, do you? A. They had men working there.

Q. They had men working there? A. Yes, sir.

Q. Clearing off the mill site?

A. But the water was running right straight down the bedrock.

Q. There were men working clearing off the hillside—is that right—and they were using that water

(Testimony of John Perelli.)

to clear the hillside off?

A. I don't know whether they were clearing the hillside off with water, but the water was running down in bedrock.

Q. That was after six o'clock in the evening?

A. Yes.

Mr. HELLENTHAL.—That's all.

Judge WINN.—Was it runing down in one channel or in different channels? [1164—1014]

A. One channel is all I see it.

Judge WINN.—That's all.

(WITNESS EXCUSED.)

Judge WINN.—With the exception of a location notice of the Cape Horn No. 2 mill site, signed by Mr. Ebner, of which we desire to get a certified copy and offer in evidence, and a deed from a man named Martin to the Ebner Gold Mining Company, that is our case.

DEFENDANT RESTS. [1165—1015]

CHARLES WELLS, a witness called in rebuttal on behalf of the plaintiff, having been recalled for further cross-examination, and having been previously sworn, testified as follows:

Testimony of Charles Wells, for Plaintiff (Recalled in Rebuttal).

Cross-examination.

(By Judge WINN.)

Q. Charley, while you were on the witness-stand I think Mr. Hellenthal was questioning you concerning the records of an organization which used to be here of the miners in the Harris Mining District—

(Testimony of Charles Wells.)

you remember seeing this minute-book of the Harris Mining District from August, 1881, to February, 1888, do you?

A. I think that is the one Mr. Hellenthal showed me.

Q. Now, I will ask you, Charley, if you were ever present at a meeting of the miners in the Harris Mining District—at an annual meeting on February 12, 1887, to elect a District Recorder for the Harris Mining District for the ensuing year?

A. I was not.

Q. Now, did you ever examine this record-book, Charley? A. I never did.

Q. Never did examine that at all? A. No.

Q. Now, I will ask you to look at page 91 of this book, and I ask you if you know anything about it?

A. Better read that yourself.

Q. “The regular annual meeting of the Miners of Harris Mining District was held on February 12, 1887, to elect a District Recorder for Harris Mining District for the ensuing year. D. H. Murphy, Esq., was chosen Chairman and John G. Heid, Sec’y. There being no opposing candidates for said office of District Recorder; upon motion of S. Lewis the rules were suspended and Louis L. Williams, the present incumbent, was chosen the Recorder by acclamation. On motion the meeting adjourned [1166—1016] *sine die*. J. G. Heid, Secretary.”

A. I wasn’t at that meeting.

Q. You were not at that meeting? A. No, sir.

Q. Did you ever hear of any such resolution or

(Testimony of Charles Wells.)

election taking place? A. I don't think I did.

Q. You said something about Louis L. Williams being United States Commissioner here at some time, didn't you, Charley?

A. He was at one time; yes.

Q. Was he United States Commissioner in 1887?

A. That I cannot say, Judge; it is pretty hard to remember back that many years.

Q. Don't you know, Charley, that it was under that resolution that I have just read to you that the books of the Harris Mining District were turned over to Louis L. Williams, and he was United States Commissioner at that time? A. In 1887?

Q. Yes. A. I don't.

Q. You never heard of that?

A. Not at that meeting that the recorder's books were turned over to the Commissioner.

Q. Do you know whether or not Louis L. Williams was recorder of the Harris Mining District from the year 1887 to 1888?

A. No, sir; I couldn't positively say.

Q. What time, then, Charley, in your direct examination were you directing your testimony to?

A. 1888.

Q. Now, then, how do you contend that the books were turned over to Louis L. Williams in 1888?

A. I didn't say they were turned over to Louis L. Williams; they were turned over to the Commissioner. [1167—1017]

Q. Wasn't he Commissioner then?

A. Oh, I guess he was; I don't know; he might

(Testimony of Charles Wells.)

have been; I would not say positively.

Q. To whom were the books turned in 1888?

A. To the Commissioner.

Q. If they were turned over to Louis L. Williams, then he was Commissioner at that time, was he?

A. I won't say they were turned over to Louis L. Williams; I say they were turned over to the Commissioner; if he was Commissioner at that time, yes.

Q. Here is a resolution that is found on page 92 of this book: "The regular annual meeting of the Miners of Harris Mining District, Alaska, was held, pursuant to the regular call, at the Court house in the town of Juneau, Alaska, on the 11th day of February, 1888. Upon motion, J. G. Heid was chosen Chairman and John Olds, Secretary. Upon motion of John Curry, Esq., the rules were suspended and L. L. Williams, the present incumbent of the office of Recorder for said Harris Mining District, was elected by acclamation, for the ensuing year, as Recorder for said Harris Mining District, Alaska. Dated Feby. 11, 1888. John Olds, Secretary. John G. Heid, Chairman." Do you remember of being at a meeting when such a resolution was passed? A. In 1888?

Q. Yes, sir; 1888, February.

A. Yes, sir; I was at that meeting; I cannot tell you the date or the day of the month.

Q. That is the way the books were turned over to L. L. Williams—was under that resolution?

A. I didn't say L. L. Williams; they were turned over to the Commissioner; I don't know if he was Commissioner or not at the time. [1168—1018]

(Testimony of Charles Wells.)

Q. Do you remember any such resolution ever having been passed?

A. I remember the resolution because we wanted to do away with two recorders.

Q. Were you present at that meeting?

A. I was present at that meeting in 1888.

Q. When this resolution I have just read to you was passed?

A. I don't know about L. L. Williams; I wont say that that was mentioned in the meeting at all; I will say they were turned over to the Commissioner.

Q. Charley, if this resolution appears in this minute-book, at page 92, you don't deny that the resolution was passed, do you?

A. May I ask one question, Judge? How many miners' meetings have been held in Alaska, here in Juneau?

Q. Answer my question—I am not testifying. Were you present, Charley, when that resolution was passed?

A. I was present at the time in 1888 that the books were turned over to the Commissioner.

Q. And you don't remember who the Commissioner was?

A. No, sir; I don't, because I took no interest in it; it didn't make any difference to me who it was.

Q. Don't you know they were turned over to him by reason of the passage of this resolution?

A. To who?

Q. To the man mentioned.

A. The Commissioner—yes, they were turned over

(Testimony of Charles Wells.)

to the Commissioner.

Q. That is what you want the Court to understand; this was your testimony when Mr. Hellenthal was questioning you—that there was a resolution passed and the books were turned over to the Commissioner, and you don't know whether it was L. L. Williams or not? [1169—1019] A. I don't know who it was.

Q. Charley, you know that this meeting that I just referred you to, which took place at Juneau, Alaska, February 11, 1888, was the last Recorder that was ever elected for the organization of the miners, don't you?

A. I am aware of the fact that we had no local recorder.

Q. There never was any meeting held in the Harris Mining District after this meeting was held in February, 1888, was there? A. Not that I know of.

Judge WINN.—Now, if your Honor please, I offer in evidence these two pages, 91 and 92 of the minute-books of the Harris Mining District, August, 1881, to February, 1888, as part of the witness' cross-examination.

(Whereupon said pages were received in evidence and marked Defendant's Exhibit "J-2.")

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wells, the meeting that you have testified to as having been held in 1888, was that the meeting held in February, or a meeting held in the latter end of the year?

A. I don't know what end of the year it was held

(Testimony of Charles Wells.)

in. I will tell you why I understand it to be in 1888. In 1887 I was called from here to San Francisco; I was making a sale of what they call the Ebner mine. I was down there until the latter part of February, 1888, and I got to Seattle and had to go back to San Francisco again, and when I got to San Francisco I got a dispatch to come on up immediately; I come up and got my man, and they paid me my money for the property, \$60,000, and that is why I know it.

Q. When did you come to Juneau, Mr. Wells, in the year 1888 from San Francisco?

A. It was along in March—the fore part of March or latter part [1170—1020] of February.

Q. If this meeting was held on the 16th of February, was this the meeting you attended?

A. The meeting was held between the time I came here and the time I went to Seattle in the fall of '88.

Q. The date on which this meeting was held, concerning which Judge Winn has cross-examined you, and the one Judge Winn asked you if you were present at, is dated in the book as February 11, 1888—were you here then?

A. No; I wasn't here; I was probably here about the last of February or March first.

Q. If this meeting was held on February 11, 1888, having called your attention to that date, then is the meeting reported in this book the meeting to which you have testified?

(Not answered because of objection.)

Q. Let me ask you this question—when was the

(Testimony of Charles Wells.)

meeting held, Mr. Wells, that you attended in the year 1888?

A. I couldn't exactly tell you that either; there was several places here they held the Court; there wasn't no regular courthouse.

Q. What I am trying to get at, Mr. Wells, is between what dates was it held? A. In 1888?

Q. Yes. A. Well, I left here in December.

Q. You left here in December and came here when?

A. I come here the first of March or the latter part of February.

Q. And the meeting concerning which you have testified was held between those two dates?

A. Between the time I come here and when I left in the fall, or December.

Q. You cannot place it any more definitely?

A. That is all. [1171—1021]

Q. That is as near as you can say?

A. That is as near as I can say because I never thought I would be called up for anything of this kind, and I ain't kept any account of it.

Q. That meeting was called for the purpose of doing away with the two recorders? A. Yes.

Q. And it was decided there then that from then on the Commissioner should also be the Recorder?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Recross-examination.

(By Judge WINN.)

Q. Charley, how is it that you remember that the miners had another meeting here after February,

(Testimony of Charles Wells.)

1888,—how is it you remember that?

A. After February 11th?

Q. Yes, sir.

A. Because it happened at the time I was here, then I went to Seattle in the fall.

Q. How do you remember the date so well that you went to Seattle and came back?

A. I remember the date because I had to; I had business.

Q. What date did you leave here to go to Seattle?

A. I couldn't tell you the date within a week, or probably six weeks; but I know that I left in December and got there before the first of the New Year.

Q. What time in December?

A. I cannot tell you.

Q. Did it take you all the time from December until New Year to go to Seattle?

A. Well, then days, Judge, it took a boat about two weeks to make [1172—1022] the trip down—not coming back, only one way.

Q. Did you arrive in Seattle on January first?

A. I couldn't say.

Q. On New Year's day, or what day?

A. It might be on December 25th or December 29th, for all I know, because I know when I got there I had 18 days in Seattle.

Q. What is the nearest date you can give, Charley, that you arrived in Seattle?

A. Any time probably from the first of December to the first of January; I know I got there inside of a month.

(Testimony of Charles Wells.)

Q. That was in 1888? A. Yes, sir.

Q. How long did you stay there, Charley?

A. In Seattle?

Q. Yes.

A. Oh, I stopped there for February, March and April—stopped there in the neighborhood of three or four months.

Q. In 1889? A. Yes.

Q. Where were you in February, 1888?

A. I was here in Alaska—in 1888?

Q. Yes, sir.

A. No, I wasn't; you are trying to get me mixed up a little and knock me off my pins—1888, February, 1888?

Q. Yes, sir. A. I was in Seattle.

Q. Well, then, you left here in 1887 to go to Seattle instead of 1888, is that it?

A. I didn't leave here in 1887 to go to Seattle; I left here in 1887 to go to San Francisco and come back in 1888.

Q. What time did you come back in '88?

A. I got back about the fore part of March or the latter part of February. [1173—1023]

Q. How do you know that date?

A. Well, any man will know when \$60,000 happened to be put in his pocket—he ought to know it.

Q. Is that the way you arrive at the date you arrived in Juneau?

A. That is what makes me think of it.

Q. Charley, will you swear positively that you were not here in Juneau on the 11th day of February,

(Testimony of Charles Wells.)

1888? A. Yes; I will swear positively I wasn't.

Q. What is the earliest date in February that you will say you were in Juneau that year?

A. In February?

Q. Yes, sir.

A. I didn't say that I come in February; I said I might have come here the latter part of February or the first of March.

Q. Is that the nearest you can place the date you got back here?

A. Yes, because I had to come back.

Q. For what?

A. Telegraphed to come back and take those men up to look at the property.

Q. You got a telegram there in Seattle to come back to Juneau?

A. Not while I was in Seattle; I left Seattle and went to San Francisco, and when I got to San Francisco I got a telegram to come back here—

Q. Who came up with you?

A. Van Brocklin and Jack Summers, who died last summer—or winter in White Pass.

Q. You swear that after you got back here that they held another miners' meeting?

A. Between that time that I got here and the time I left there was another meeting.

Q. When did you leave?

A. Sometime in December, for Seattle.

Q. In 1887 or '88? [1174—1024]

A. In '88; in '87 I was in San Francisco.

Q. Then, this resolution that was passed on Febru-

(Testimony of Charles Wells.)

ary 11th— A. I know nothing at all about it.

Q. You know nothing about it?

A. No, sir; I don't know a thing about it.

Q. What was the necessity, Charley, of calling a meeting when they had already held a meeting on February 11, 1888, and had elected Williams as the recorder for a year, which would take it up to 1889—what was the necessity of holding another meeting then?

A. There was a great many meetings here—there was no necessity of calling it at all.

Q. Do you know what they called any such meeting for at that time?

A. I don't know; I never took any interest in that kind of a meeting; in other meetings I have, but not in this meeting here because there were plenty of other people here to attend to it.

Q. Who got up and made any motion at that meeting, Charley?

A. You can't prove it by me; I didn't have interest enough to pay any attention to it.

Q. Who presided at that meeting?

A. I couldn't tell you.

Q. What was done at that meeting?

A. I don't know, only they turned the books over to the Commissioner.

Q. Don't you know they had already been turned over to Louis Williams in 1887?

A. Not that I know of; I wasn't here in '87.

Q. Who was it first put this thing on foot in that meeting, about the motion to turn them over to the

(Testimony of Charles Wells.)

Commissioner? A. I couldn't tell you.

Q. How did the motion read?

A. I don't recollect now. [1175—1025]

Q. How old are you, Charley?

A. Sixty-seven; I am old enough to have sense enough to know what happened.

Q. Is your memory good?

A. Yes, just as good as usual, and a little better in some things.

Q. Why is it, Charley, if you were at that meeting when the resolution was passed that you don't remember who got up and made it, or anything

A. Didn't take interest enough in it; I was through with my interest and thought I was going to get out of the country altogether; that is why I didn't pay more particular attention to it.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wells, in answer to Judge Winn's question you stated that the action taken was to turn the books over to the Commissioner? A. Yes, sir.

Q. What I want to get at now—that was the only action you remember, and you said that was the only action you remember was taken?

A. That is it; that is all I paid any attention to.

Q. What I am trying to get at, in order to straighten out any confusion in the record—previous to this time you have testified that the records were turned over to the Commissioner and action was taken making the Commissioner the recorder of the

(Testimony of Charles Wells.)

Harris Mining District for future years?

A. Yes, sir.

Q. Do you mean to incorporate that in your answer? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1176—1026]

The plaintiff, to further maintain the issues upon its part, introduced as a witness in rebuttal PETER EARLY, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Peter Early, for Plaintiff (In Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Peter Early? A. Yes, sir.

Q. What is your business?

A. I have been prospecting—prospector.

Q. Mining? A. Mining.

Q. How long have you been engaged in that business? A. Well, about 19 years in Alaska.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. How long have you lived in the Harris Mining District?

A. Well, I have lived in the Harris Mining District ever since I have been in Alaska excepting what time I have been out prospecting on my property.

Q. Your home has been in the Harris Mining District for nineteen years? A. Yes, sir.

(Testimony of Peter Early.)

Q. That is the 19 years last past? A. Yes, sir.

Q. Mr. Early, directing your attention now to the rules of the miners of the Harris Mining District—when you came here to the Harris Mining District did you find it an organized mining district at that time? A. Yes.

Q. Now, directing your attention to the rules of the miners of the [1177—1027] Harris Mining District as they have been read in evidence here relating to the appropriation of water and the acquisition of water rights—you are familiar in a general way with those rules?

A. Yes; I am familiar with them.

Q. Those rules, Mr. Early, as they are enforced by the miners, how do those compare with the rules as contained in the records of the Harris Mining District offered in evidence here and read into the record?

A. They are the same as the rules that were in force when I came to the country. I came over to Judge Mellen and—

Q. Who was Judge Mellen?

A. He was the recorder.

Q. Did you make any inquiries at that time as to what the rules were? A. Yes, sir.

Q. From whom? A. Judge Mellen.

Q. He was the recorder in whose custody the rules were kept? A. Yes, sir.

Q. Now, Mr. Early, do you know whether those rules as read in evidence and as you found them to be in force when you came here have been since that

(Testimony of Peter Early.)

time, and are at the present time generally observed by the miners of the Harris Mining District?

A. Well, yes; I know myself and from talking with others that the rules—

Q. Have those rules concerning which you have testified of the Harris Mining District relating to the appropriation of water and the acquisition of water rights, to which we have just referred, been generally observed by the miners of the Harris Mining District from the time that you came here up to the present time? [1178—1028]. A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Are you in the employ, Mr. Early, of the Alaska-Juneau Gold Mining Company? A. No, sir.

Q. You have been in their employ recently, haven't you? A. No, sir; not recently.

Q. What are you doing now?

A. I ain't doing anything.

Q. How long ago was it that you quit the service of the Alaska-Juneau Gold Mining Company?

A. Last year.

Q. Last year? A. Yes, sir.

Q. How many water locations, Mr. Early, have you made in Alaska?

A. I have made, I think, about four—four or five; made four myself and had one made.

Q. When was the first one you made?

A. It was on Kowee Creek, in the Berner Bay country.

(Testimony of Peter Early.)

Q. That was in the Berner Bay Mining District and not in the Harris Mining District?

A. Yes, sir.

Q. You followed the Harris Mining District rules in making that location, did you?

A. That was my intention.

Q. Do you know where you recorded that notice?

A. I think it is recorded here.

Q. Did you give the year?

A. Yes, sir; I think it was in 1898, the first location I made.

Q. Located in your own name? [1179—1029]

A. Located it in my own name.

Q. Did you make it in your own name?

A. I think I did, yes.

Q. Signed it yourself? A. Signed it myself.

Q. Do you know substantially what you put in that notice? A. Well, no; I don't remember.

Q. Do you know what the rules of the Harris Mining District require you to put in a notice?

A. Well, I have a copy and also had one of those books. I made it as near that as I could make it out, I think.

Q. Do you remember now, Mr. Early, what the rules of the Harris Mining District, pertaining to water locations, require of you to put in a notice?

A. Well, yes; in a way I do.

Q. What do they require?

A. Well, in the first place you have to mention the number of inches that you think you will require, and post that notice on the claim or place where

(Testimony of Peter Early.)

you calculate to appropriate it, and the instructions are to record it in ten days, and commence work on it in twenty days, I think, or within that time.

Q. Now, did you contain those matters in that notice that you posted out at Berner's Bay, the first one you say you posted in Alaska?

A. I think I did.

Q. Would you be sure of it.

A. Well, it is my idea that I did.

Q. Did you record that notice within ten days after you posted it on the place of intended diversion?

A. I wouldn't be sure as to that, whether I did or not, but as soon as I could come to town I think I filed the notice on record.

Q. You will not say whether you got it on record within the ten days or not? [1180—1030].

A. No, I wouldn't; it was my intention; I commenced work on it immediately.

Q. Was that 1898 or 1900 that you made this location? I ask you because I want to look up the record.

A. It was right close there; I wouldn't say it was '98; I ain't positive as to the year.

Q. Do you remember how many inches of water you claimed under that notice? A. No, I don't.

Q. Do you remember under what pressure you said you would take it from the creek?

A. I don't believe I remember that.

Q. You don't think you put that in the notice, do you? A. No; I put in the quantity at the time.

Q. This was what creek? A. Kowee.

(Testimony of Peter Early.)

Q. Now, let me refresh your memory on that notice, Mr. Early: Don't you know that you were eight days behind the ten days in having it filed for record?

A. I might have been; I didn't say that I had it filed within the ten days.

Q. I know you didn't; you said you didn't know; I just simply want to ask you if you don't remember you were eight days after the ten days in filing that location. Did you file any other location about that time?

A. I think I filed a power site or a mill site.

Q. On the same creek? A. Yes, sir.

Q. Are you sure that that other notice was a power site or water location notice—didn't you make two water locations about that time?

A. I made two at the same time; I am under the impression that one was a power site and the other a water location. I know [1181—1031] I only worked on the water location at that time.

Q. Well, now, do you remember, to refresh your memory, that in both of those notices, in one you claimed 1,000 miner's inches, and the other 5,000, and they were both water locations?

A. They might have been.

Q. Do you remember that you didn't file or have recorded either one of those notices within the ten days? A. I don't hardly think I did.

Q. What is your next water location notice, Mr. Early? A. I think in 1903.

Q. Where did you make that one?

(Testimony of Peter Early.)

A. Over there on the creek in the Yankee Basin country.

Q. Do you remember how many inches of water you located there?

A. No, I don't; I couldn't say without looking the notice up.

Q. You know you didn't get that on the record in time, don't you, Mr. Early?

A. I think I turned that over to Mr. Heid to get right in.

Q. Mr. John G. Heid? A. Yes, sir.

Q. You don't know, then, whether it was recorded within the ten days or not, do you? A. I do not.

Q. That was made what time?

A. I think it was in 1905.

Q. On what creek? A. Kowee.

Q. The same creek. Was that made in your own name?

A. I was one of the parties to the location, and I think also Mr. Heid's name was on that location.

Q. John G. Heid? A. John G. Heid.

Q. I just want your best remembrance, Mr. Early, so I can ascertain from the records—you wouldn't be positive whether [1182—1032] Heid's name was on it or not, would you?

A. No, I wouldn't, but I know he was interested at that time.

Q. Was there a man by the name of Bach?

A. Frank Bach; yes, sir.

Q. Heid, Bach and you?

A. I think that is what it had on the notice.

(Testimony of Peter Early.)

Q. Don't you know, Mr. Early, that that notice was recorded at least a month after the ten days had expired?

A. I couldn't say as to that because I turned the notice over to Mr. Heid.

Q. I will change that to pretty nearly three months after. A. I don't know.

Q. If the records show that, you have no reason to doubt it, have you? A. Certainly not.

Q. Now, where was your next water location, Mr. Early?

A. That was on,—I didn't make that location; it was made under my direction; I didn't make it myself.

Q. Where was that?

A. That is on Canyon Creek, I think.

Q. When was that made, and in whose name?

A. That was last spring a year ago; it was made in Gudmund Jensen's name.

Q. And on Canyon Creek? A. Yes.

Q. Where is Canyon Creek?

A. It is up in Yankee Basin, in Berner's Bay; and another one, I think, on the northeast fork of Kowee Creek; I think those are the only locations I have ever been interested in.

Q. In whose name, did you say?

A. Gudmund Jensen's.

Q. Did you sign and draw up the notice, or did he do that, Mr. Early? [1183—1033]

A. I don't remember that.

Q. You don't know anything about the recording

(Testimony of Peter Early.)

of that notice, do you?

A. Yes; I think that was recorded within the ten days; I tried to follow out—it was my instructions to him to follow the rules, and I think he recorded that in time.

Q. These were all out of the Harris Mining District, weren't they? A. Yes.

Q. None of them in the Harris Mining District?

A. None of them in the Harris Mining District.

Q. Now, where did you make a water location in the Harris Mining District?

A. That is the only locations I have ever made.

Q. You answered Mr. Hellenthal's question that you knew the boundaries of the Harris Mining District? A. When I came here—

Q. Now, wait; Mr. Hellenthal asked you if you knew where the boundaries—where the Harris Mining District is, and I think you answered that question that you did. Now, do you contend that this part of the country you have been making locations in is the Harris Mining District? A. I do not, no.

Q. You never have made a location of water in the Harris Mining District, have you?

A. I have not.

Q. Well, if three of these notices were not filed within the time, and one was filed within the ten days, you didn't even adhere to the rule yourself, or attempt to, did you, Mr. Early?

A. I did, as closely as I could do it.

Q. Well, you know that that has been the general rule so far as recording is concerned, that they put

(Testimony of Peter Early.)

them on record as soon as they can, or within a reasonable time, don't you? A. Yes, sir. [1184—1034]

Q. You know that particular or specified time of ten days hasn't been followed in only a few cases, don't you? A. No, I don't know that.

Q. Well, how many cases can you mention to the Court that anyone has posted up a water location notice, of your own knowledge, and filed it within the ten days?

A. Personally I couldn't say of a single one.

The COURT.—When you came to the Harris Mining District I understand you to say that the rules as read into the record were the rules that were then in force here?

A. That is what I understood; that is my information.

The COURT.—As to the location of water?

A. Yes, sir.

The COURT.—Now, as to the location of mining claims, what rules were in force?

A. Well, I think the instructions I got and the way we have always located, we had thirty days to record and ninety days to establish our lines permanently

The COURT.—No, I mean what rules were in force as compared to the rules that were in the pamphlet that you say you had, as to the location of mining claims?

A. Well, I don't know of any other rule; I followed the same rule all the way through.

The COURT.—Did you locate any mining claims

(Testimony of Peter Early.)

in the Harris Mining District?

A. I did locate one, but I found out that I was on ground that was claimed, and I didn't have it put on record.

The COURT.—Now, the mining rules that the discoverer of a claim shall have 200 feet extra, was there any such rule as that in force when you came here?

A. Not in force; no, sir.

Q. There was another rule in that pamphlet that you referred to, providing hill claims, gulch claims and creek claims—do you know of any such subdivision of claims? [1185—1035]

A. I have never located a placer claim in the country.

The COURT.—Do you know whether that rule was in force?

A. Well, it was my understanding in talking to the miners that that was the rule; there was some such rule.

The COURT.—Now, when you go out to locate claims in the Harris Mining District, would you locate, say, Discovery, claim No. 1 above Discovery; claim No. 2 above Discovery; claim No. 3 below Discovery, and so forth, or how were the claims named?

A. I couldn't answer that question because I never had anything to do with placer.

The COURT.—You don't know what the rule was about that? A. No; not in particular.

The COURT.—Did anybody ever call your attention to the fact that the rules for locating mining claims were not applicable, but that the rules for

(Testimony of Peter Early.)

locating water were still in force?

A. That has always been my understanding.

The COURT.—That the rules as to mining claims were not in force, and the rules as to water claims were in force?

A. No; the rules and the law are what we always went by.

The COURT.—What I am trying to get at Mr. Early—did you, or did you not, understand that the rules for locating mining claims which are contained in that little pamphlet, and the rules for making locations of water were all in force at that time?

A. Yes, sir.

The COURT.—That was your understanding?

A. Yes, sir.

The COURT.—That is all.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1186—1036]

The plaintiff, to further maintain the issues on its part to be maintained, introduced as a witness, in rebuttal, AL WILSON, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in rebuttal as follows:

**Testimony of Al Wilson, for Plaintiff (In
Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Al Wilson? A. Yes, sir.

Q. You know where the Harris Mining District is, do you? A. Yes, sir; pretty close to it.

(Testimony of Al Wilson.)

Q. What is your occupation, Mr. Wilson?

A. Prospecting and working around the mines.

Q. When did you come to the territory embraced in the Harris Mining District? A. 1886.

Q. 1886? A. Yes, sir.

Q. And you have lived here most of the time ever since?

A. Yes; I have been inside a couple of times; only below once.

Q. But your home has been here?

A. Right here in Juneau.

Q. When you came here in 1886 had the Harris Mining District been organized? A. Yes, sir.

Q. At that time did they have rules in the Harris Mining District relating to the appropriation of water and the acquisition of water rights?

A. Yes, as far as I could find out they did.

Q. The rules as read here from the minutes of the records of the Harris Mining District, how do they compare with the rules of the miners that you found in force at the time you came here? [1187—1037]

A. Yes, sir; they were; the rules that I heard are the same.

Q. Those are the rules?

A. No, sir; there was no other rules.

Q. Do you know whether, Mr. Wilson, the rules that were read into the record and which you say were in force at the time you came here, have been generally observed by the miners of the Harris Mining District between the time you came here in 1886 up to the present time?

(Testimony of Al Wilson.)

A. Yes, sir; as near as I know.

Q. Now, I will ask you if those rules as read into the record relating to the appropriation of water and the acquisition of water rights have been generally observed by the miners of the Harris Mining District during the period commencing with 1886 to the present time?

(Question not answered because of objection.)

Q. What do you say, Mr. Wilson, as to whether the rules as read into the record as the rules of the Harris Mining District concerning the appropriation of water, have been generally observed by the miners during the time to which you have testified—that is to say, the period commencing with 1886 up to the present time?

(Not answered because of objection.)

Q. What do you say, Mr. Wilson, as to whether or not those rules that have been read into the record from the minutes of the Harris Mining District, concerning which you have testified, have been generally observed by the miners of the Harris Mining District during the period commencing with 1886 up to the present time? A. Yes; as well as I know they have.

Q. As well as you know they have been what—been observed? A. Yes, sir; been observed.

Mr. HELLENTHAL.—You may cross-examine.
[1188—1038]

Cross-examination.

(By Judge WINN.)

Q. What are the rules, Mr. Wilson?

A. In what way do you mean?

(Testimony of Al Wilson.)

A. Just give me the rules. A. In order?

Q. Yes, sir.

A. Well, you have got to record in ten days, and get to work in twenty days.

Q. What have you got to put in your water location notice?

A. Well, you have got to put in where you have it at and where you are going to use the water at.

Q. Anything else?

A. It has to be used in mining; you cannot waste your water.

Q. Where did you ever mine besides in Alaska?

A. I have been in Dawson.

Q. How long were you in Dawson?

A. Oh, I was in Dawson for two or three years.

Q. When was that?

A. I went in there to Dawson in 1899.

Q. When did you come out?

A. Well, I came out of there in 1901 or '2, I wouldn't say which.

Q. 1901?

A. No, it was later than that that I came out; it was in 1902.

Q. Where had you been living prior to that time?

A. I had been below; I had been down in Washington.

Q. Have you lived in Alaska ever since you came back from the Yukon?

A. No, not since I came back.

Q. Where have you been living?

A. Well, since I came back here I went in—

(Testimony of Al Wilson.)

Q. Just give me the length of time you have lived in Alaska, in the Harris Mining District. [1189—1039]

A. Since I came out I have been here since 1892.

Q. 1892? A. I should say 1902.

Q. You have been here in the Harris Mining District? A. Yes, sir.

Q. What have you been following?

A. Prospecting and working around the mines.

Q. Who have you been working for?

A. Well, I worked here on McGinnis Creek, and I worked on Montana and Windfall Creek, in placer.

Q. Have you ever worked in quartz?

A. Yes, I have done assessment work, and worked some in quartz.

Q. Do you know whether Montana Creek is in the Harris Mining District or not?

A. I don't think it is; in fact the way the lines run it cannot be.

Q. Well, what placer mining have you done in the Harris Mining District?

A. Well, I haven't done any in this district.

Q. What water location notices have you made in the Harris Mining District?

A. Never put up any.

Q. Have you talked over with anyone since you have been subpoenaed here as a witness about what the supposed miners' rules in relation to location water are? A. No, sir.

Q. You haven't talked it over with anyone at all?

A. No, not to find out any information at all.

(Testimony of Al Wilson.)

Q. When was the last time that you talked with anyone, outside of any talks you may have had since this was commenced, about the location of water?

A. Well, I don't know, for I have had no occasion to use it.

Q. You wouldn't have occasion to talk to anyone about it then, would you? [1190—1040]

A. Not since I came out; I saw the by-laws then that were out.

Q. That is, not since you came out from the Yukon?

A. Yes; when I came out the first time—when I came out in '91—when I came out the first time, you know, from the inside.

Q. 1891?

A. Yes; when I came out the first time.

Q. And it is since that time that you have had no occasion to talk with anyone about it?

A. No, I have had no occasion.

Q. Not having any water location notice to make you never looked up to find out what the custom was, or anything of that kind, as to how you would have to make a water location notice? A. No.

Q. Now, when was it you said you left here to go to the Yukon?

A. I left here in the first place in 1888; then I came out the first time in 1891.

Q. Then, you mean to say that since you left here in '88 to go into the Yukon you haven't heard any discussion about how they had to make water location notices?

(Testimony of Al Wilson.)

A. I was telling you that when I come out I did.

Q. In what year? A. 1891.

Q. You were not going to make any water location notices yourself, were you?

A. No, but my partner, Mr. Howard, that was here, I was stopping with him, and we got talking and he showed me the rules at that time.

Q. The same rules you had seen before?

A. Yes, the same thing.

Q. Did you make any water location notice?

A. No, sir.

Q. He just showed you the rules?

A. Showed me at that time to see if there was any change. [1191—1041]

Q. You wanted to look them over and see if there had been any change since you left? A. Yes, sir.

Q. And you looked them over and found out there had not been any change?

A. Not in the water part.

Q. And you concluded that they were in force and effect, as they had been in '88? A. Yes, sir.

Q. That is the way you arrived at the conclusion, is it? A. Yes, sir.

Q. When were you subpoenaed here as a witness in this case?

A. No, sir; I have got no information whatever; when he asked me if I had seen one of those books before, that was all.

Q. Who asked you that?

A. Why, he asked me if I had seen one before.

Q. Mr. Hellenthal? A. Yes, sir.

(Testimony of Al Wilson.)

Q. I will ask you this; you were here in '86,—did you ever attend any of those miners' meetings?

A. No, sir; I never did.

Q. You didn't attend any meeting here of the miners in 1888? A. No, sir.

Q. Did you ever attend any meeting of the miners' organization? A. No, sir.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [1192—1042]

The plaintiff, further to maintain the issues on its part, introduced as a witness, in rebuttal, HENDRICK HENDRICKSON, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Hendrick Hendrickson, for Plaintiff
(In Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You may state your full name.

A. Hendrick Hendrickson.

Q. Where do you live? A. In Juneau.

Q. Did you ever work for the Alaska-Juneau Gold Mining Company? A. Yes.

Q. Did you work for them in the month of October, 1910? A. Yes.

Q. Did you work for them on the 3d day of October, 1910—were you working for them on that day? A. Yes, sir.

(Testimony of Hendrick Hendrickson.)

Q. Where were you working on that day, October 3d, 1910?

A. At the canyon at Gold Creek near Snowslide Gulch.

Q. Do you remember when a dam was put in in Gold Creek? A. Yes.

Q. Were you there at that time? A. Yes.

Q. You know where the dam is now in Gold Creek? A. Yes.

Q. Were you present at the time that the first dam was put in? A. Yes; I was there.

Q. When was that? When was it, do you remember, when that first dam was put in?

A. We put a box in October 3d. [1193—1043]

Q. When you put the box in on October 3d did you put a dam across the creek?

(Not answered because of objection.)

Q. When you put the box in, did you put in anything else besides the box?

A. The first thing when we put that box in between them boulders outside, and after that we built the dam.

Q. You built the dam the same day?

A. No; not the same day; we worked there that next day.

Q. Were you there that evening? A. Yes, sir.

Q. Did you put the poles across the creek and turn the water in that evening?

(Not answered because of objection.)

Q. When did you put the poles in across the creek and turn the water in?

(Testimony of Hendrick Hendrickson.)

A. Water was running in when we built the dam, and when we built the dam there was more water; water was running there that way before we put the box in, the first piece of flume, and then the water run through the flume.

Q. Do you know where there was a brushed out line along there on the hillside? A. Yes, sir.

Q. Where did you put the dam and the box—above or below that line—up the creek or down the creek? A. Down the creek.

Q. Do you know where the falls are there—where did you put that box and dam—was it near the falls? Where did you put the dam and box with reference to the falls—near the falls or a long ways away from it? A. Near the falls.

Q. Do you know where the man was drilling the rock in the afternoon? [1194—1044] A. Yes.

Q. Who was that man? A. Eli Mackey.

Q. Was there anybody else helping him?

A. Two there.

Q. Two men drilling? A. Yes, sir.

Q. Where was that rock?

A. Right below that big one—that is the small one (indicating) and the big one laid up to that small one.

Q. Was it near the falls? A. Yes, sir.

Q. Where was it from that line that was brushed out over the hill? A. That is below.

Q. Was there ever any dam or flume box put in above that line?

(Objection, and question asked again.)

(Testimony of Hendrick Hendrickson.)

Q. Did you ever put in any dam or flume above that brushed out line, up the creek from that brushed out line?

A. I couldn't say very well; on the left-hand side going up the creek the pole was across the creek; I couldn't say very well; I didn't see down the creek; when you are walking down the creek you cannot see so well like up the hill.

Q. Was that the only dam and flume you put in? You never put in any other dam or flume, did you?

A. Afterwards?

Q. No, before. That was the first one you put in, wasn't it? You understand me, don't you? You didn't put a dam or flume at any other place except that place, did you?

(Not answered because of objection.)

Q. Now, that dam and flume that you put in that time when you first put it in, is that in the same place the dam is now?

A. Yes; that is the same place.

Mr. HELLENTHAL.—That is all. [1195—1045]

Cross-examination.

(By Judge WINN.)

Q. On the first day, you put a flume or box in the creek?

A. Yes; the first day we put the box and the poles across; we have to cross the creek to get that box in, and there was a little brush—there wasn't much dam—that was fixed afterwards.

Q. You had to have poles there to get across?

A. To get across to get that box in; that was on the

(Testimony of Hendrick Hendrickson.)

left-hand side and the box was on the right-hand side going up the creek, and we had poles and planks we put there, and then when we built the dam we got to brush all the river bank and throw the brush and whatever we could get, and put the box in, and that is the way that first flume was put there.

Q. What day did you do that—was that the 3d or 4th of October?

A. On the 3d, and again then on the 4th.

Q. What did you do on the 4th?

A. Was working there fixing up.

Q. What did you fix up?

A. That dam, after that pole was put in between the boulder.

Q. What time on the morning of the 4th did you go up there? A. Seven o'clock.

Q. What did you see when you got up there; was the box there in the water?

A. Box was mashed that time.

Q. It was mashed? A. Yes, sir.

Q. What did you work at up there on the 4th?

A. I couldn't say so well; we was there.

Q. Do you remember what you did on the 4th?

A. We might go back and work at the tunnel.

Q. You didn't go back up there on the 4th?

A. Oh, I went back in the morning. [1196—1046]

Q. What did you do on the 4th? Did you stay up there all day?

A. I don't remember if I stayed there; I might go back and work on the tunnel; I don't remember.

(Testimony of Hendrick Hendrickson.)

Q. You mean you came on down the creek and worked?

A. I might; that is the way in my mind, that I go down the 4th.

Q. Were there any poles up there on the morning of the 4th, across the creek—up where the box was on the 3d, was there any poles there on the 4th?

A. I don't know.

Q. You were working on a tunnel on the 4th—is that the tunnel down—

A. Might don't work in the tunnel that time; might work on flume grade; other fellows working in the tunnel; I don't work in the tunnel.

Q. You didn't work on the dam on the 4th, did you?

A. I didn't work on the tunnel; I worked on the flume grade.

Q. The Alaska-Juneau flume grade?

A. Yes, sir.

Q. Did you help to build the big dam?

A. Yes, sir.

Q. This dam that is up there now? A. Yes, sir.

Q. What did you do in building that dam—what did you work at? A. I put that dam there.

Q. Did you work on the big dam that is there now, and completed? A. Yes.

Q. When did you work on that? A. 1911.

Q. You put in the big dam that is there now?

A. Part of it; I didn't do that part that was below the rock.

Q. One part of the dam you didn't touch in 1911,

(Testimony of Hendrick Hendrickson.)

but there was another part that you moved around a little, down the creek?

A. Yes; to the left-hand side of the creek, we moved down; and [1197—1047] the other in just the same place, up by that rock.

Q. On the left-hand side of the creek as you go up, in 1911 you moved that part of the dam down a little? A. A little, yes, below that first one.

Q. You moved it down the creek a little?

A. Yes.

Q. Do you remember what time that was in 1911—was it in the fall of the year, or in the summer, or when? A. Fall.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. The main dam where the intake was—the box was, that you didn't touch in 1911? A. No.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [1198—1048]

The plaintiff, to further maintain the issues on its part to be maintained, introduced as a witness, in rebuttal ARTHUR KUNIZ, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Arthur Kuniz, for Plaintiff (In
Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your full name. A. Arthur Kuniz.

Q. Where do you live? A. Live in Juneau.

Q. Did you ever work for the Alaska-Juneau
Gold Mining Company? A. I have.

Q. Did you work for them in October, 1910?

A. I did.

Q. Did you work for them when the dam was put
in? A. I did.

Q. What was the day that the dam was first put
in? A. That was the 3d day of October, 1910.

Q. What time of the day did you first put the dam
in on the 3d day of October, 1910?

A. I don't remember the time; it was somewhere
about 9 o'clock in the evening.

Q. What did that dam consist of and how was it
put in?

A. The lower part of it we put in some logs, and
then the upper end of it was put in with brush and
rocks.

Q. Did you put in anything except the dam at
that time? A. Put in the box.

Q. Now, did you notice at that time a brushed
out line extending across the creek? A. I did.

Q. Where was that dam and box, about, with
reference to that [1199—1049] brushed out line,
above it or below it? A. Just below the line.

(Testimony of Arthur Kuniz.)

Q. Did you notice the falls there? A. I did.

Q. Where was the dam with reference to those falls? A. The dam was just above the falls.

Q. Did you notice where the rock was that was drilled out on that afternoon? A. Yes, sir.

Q. You saw the men drilling the rock, did you?

A. Yes, sir.

Q. Where was that rock with reference to the dam that was put in?

A. The dam was constructed across from the rock.

Q. Where was that rock with reference to the brushed out line, above it or below it?

A. Just below the line.

Q. Did you put any other dam or flume above the brushed out line at any time?

A. No; not that I know of.

Q. Have you seen the Alaska-Juneau dam since the time you first put the dam in? A. I have.

Q. Where was the dam as you first put it in on the night of October 3d with reference to where the dam now is? A. It is in the same place.

Q. Where was the intake with reference to where it now is? A. Same place.

Q. Where was the flume with reference to where it now is? A. Same place.

Mr. HELLENTHAL.—You may cross-examine.
[1200—1050]

Cross-examination.

(By Judge WINN.)

Q. Don't you know that you never put in any dam up there on October 3d?

(Testimony of Arthur Kuniz.)

A. The dam was put in before we put in the box, I believe.

Q. You never put anything but two logs across the creek to walk across, did you?

A. The logs were put in first, and then we got some brush and laid it across the logs.

Q. How many logs—two or three?

A. I forget the number.

Q. Would you say there was over two? A. No.

Q. You walked over those logs when you swung the box around in the middle of the creek, didn't you? A. Maybe we did; I have forgotten.

Q. How much brush did you put in there?

A. I wouldn't be positive of that; the brush laid in the creek there.

Q. Don't you know the water was so high in the creek you could not put any brush in the creek and hold it in?

A. We rolled in some big boulders on top of the brush to hold it down.

Q. And you put in the two logs and some brush?

A. Yes.

Q. Did you go back up there on the morning of the 4th? A. I did.

Q. What did you see there on the morning of the 4th, if anything?

A. The dam was still there; the box was smashed up.

Q. What do you mean by dam?

A. The dam that was put in there on the 3d.

Q. You mean those two logs and that brush that

(Testimony of Arthur Kuniz.)

was put in? A. Yes. [1201—1051]

Q. Did you work on the 4th up there?

A. Yes, sir.

Q. On the 5th? A. On the 5th also; yes, sir.

Q. You helped build the first dam, did you?

A. Yes, sir.

Q. It has never been changed any, you say?

A. Not to my knowledge, no.

Q. When did you see it last?

A. About a week ago.

Q. You will swear to the Court it has never been changed since it was built? A. No.

Q. Not a bit?

A. On the upper end some logs were put on since that.

Q. That is all that has been changed?

A. That is all that has been changed.

Q. But the dam, clear across the creek, runs along the same line that it always ran? A. Yes, sir.

Q. Did you hear Hendrickson's testimony awhile ago? A. I didn't; I was outside.

Q. If Hendrickson said he helped put those boards across the creek to walk across on, what do you know about that?

A. I suppose they were put there for that purpose first.

Q. You knew they were at that time?

A. No, sir; I don't believe so.

Q. Those two logs that you put across there on the evening of the 3d are still in the creek, are they?

A. No, I don't know about that; I couldn't tell;

(Testimony of Arthur Kuniz.)

the last time I was up there there was so much water I couldn't see nothing.

Q. You don't know whether the dam is in the same place that those two logs were put in to walk on, or not, do you?

A. The dam is in the same place. [1202—1052]

Q. Never been moved up or down the creek?

A. Not that I know of.

Q. You have seen it—is there any change in it?

A. No.

Q. No change at all? A. No.

Judge WINN.—That's all.

(WITNESS EXCUSED.)

(Whereupon Court adjourned until 10 o'clock tomorrow morning.) [1203—1053]

MORNING SESSION.

August 7, 1914, 10 A. M.

The plaintiff, to further maintain the issue on its part to be maintained, introduced as a witness in rebuttal GUS WACHTER, who being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Gus Wachter, for Plaintiff (In Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Gus Wachter? A. Yes, sir.

Q. Where do you live, Mr. Wachter?

A. Douglas.

(Testimony of Gus Wachter.)

Q. Have you ever worked for the Alaska-Juneau Gold Mining Company? A. Yes, sir.

Q. Did you work for them in the month of October, 1910? A. Yes, sir.

Q. Do you know where Snowslide Gulch is?

A. Yes, sir.

Q. And where the Alaska-Juneau flume and dam are in that neighborhood? A. Yes.

Q. Were you present on the 3d of October, doing work in the neighborhood of where the Alaska-Juneau dam now is? A. Yes, sir.

Q. What were you doing there at that time?

A. We set the box up over where the water was to go through, then we set the timbers on it and throwed some brush and rock and everything what we could get loose to make a dam.

Q. When was that? A. October 3d.

Q. Now, where was that dam put in—you know where the dam is now, Mr. Wachter? A. Yes, sir.

[1204—1054]

Q. Where was that dam with reference to where the dam now is?

A. That dam we built on October 3d?

Q. Yes. A. Same place.

Q. Where was the box put in, or headgate or flume, with reference to where the headgate and flume now are?

A. There was a brushed out line on the left-hand side going up stream, of the dam.

Q. Did you understand my question? Where was the intake to the box that you put in on October

(Testimony of Gus Wachter.)

3d with reference to where the intake of the Alaska-Juneau flume now is—in a different place or the same place it now is? A. Same place.

Q. Did you notice that brushed out line on the hillside on October 3d? A. Yes, sir.

Q. Where was the dam put in by you on October 3d with reference to that brushed out line—was it above it or below it? A. Below it.

Q. Where was the flume put in with reference to that brushed out line—above it or below it?

A. Below it.

Q. Do you know where some rocks were drilled in the creek at that time? A. Yes, sir.

Q. Who drilled those holes?

A. I drilled them myself.

Q. Did anybody help you? A. Yes, sir.

Q. Who was that? A. Eli Mackey.

Q. Where were those rocks drilled with reference to the place where the dam now is? [1205—1055]

A. Alongside the dam.

Q. That was right alongside the dam as it was put in on October 3d? A. Yes, sir.

Q. Do you know where the falls are there?

A. Yes, sir.

Q. Where was the dam that you put in on October 3d with reference to the falls?

A. I don't understand.

Q. That dam that you put in on October 3d, was it near the falls? A. Yes; near the falls.

Q. Where was the flume, the intake, just above the falls? A. Yes.

(Testimony of Gus Wachter.)

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Did you ever testify in this case before?

A. No.

Q. You have never been on the witness-stand before?

A. Never been in the courthouse in my life; this is the first time.

Q. Do you work for the Alaska-Juneau or Treadwell people? A. Yes, sir.

Q. How long have you worked for them?

A. Oh, I don't remember exactly; I worked there six or seven months, might be a little over.

Q. Six or seven months when? A. In 1910.

Q. Are you working for them now?

A. I am working for the Treadwell mine now in Douglas.

Q. That is the mine that Mr. Kinzie is superintendent of? A. Yes, sir. [1206—1056]

Q. And he also holds an office and looks after the work over here on this side for the Alaska-Juneau Company, don't he?

A. I guess he does; I never asked him.

Q. Do you know Hendrickson, the man that testified yesterday? A. Yes, sir.

Q. He is working for them now, isn't he—in the employ of the Alaska-Juneau people?

A. I don't know.

Q. You don't know where Hendrickson is working now? A. I don't know.

(Testimony of Gus Wachter.)

Q. You were up on this place on Gold Creek on October 3d—what time did you get there?

A. Oh, I was there the first of October.

Q. What were you doing up there on the first of October? A. Oh, I was working around that place.

Q. Working around what place?

A. On the ditch there a little while, and then they called me up to the dam on the third.

Q. There wasn't any dam up there on the first, was there,—What date was the first time you did any work up there about where the dam is now?

A. Third.

Q. You were working farther down this way before the 3d, were you?

A. On the lower side, down stream.

Q. Now, then, the dam that you talk about as being put in on the 3d had two logs put across the creek, didn't it? A. Yes, sir.

Q. Two logs put across the creek, and you put those logs there so you could put some flume out in the creek, didn't you?

A. No; we put a box on it, and then we put some brush and rocks to hold the water up.

Q. You put some brush in there—the creek was pretty high—there [1207—1057] was a good deal of water in the creek, wasn't there?

A. Yes, sir; some.

Q. Ran pretty swift, didn't it?

A. A man could fix it all right.

Q. Now, did you go back up there on the morning of the 4th? A. Yes; we were down there.

(Testimony of Gus Wachter.)

Q. What were you doing up there on the morning of the 4th?

A. We started drilling and making a place for the water flume.

Q. You drilled and made a place for the water flume, and that was on the 4th? A. That is the 4th.

Q. Where did you make that place for the flume on the 4th?

A. Alongside of the dam, and to the lower side.

Q. You commenced on the morning of the 4th, then, to get a place so you could put the flume in?

A. We had the place started already on the 3d.

Q. But you hadn't finished it?

A. We had a dam put in and finished it already.

Q. The thing that you call the dam is the thing that had two logs across the creek, and some brush thrown in up above it—that is what you refer to now when you are talking about the dam?

A. We done that on the 3d.

Q. Did you work on the dam where it is now—did you do any work on that dam where it is now, up on Gold Creek? A. I don't understand you.

Q. When did you see the Alaska-Juneau Company's dam in Gold Creek? A. Last, you mean?

Q. Last; yes, sir. A. Last Thursday.

Q. Now, did you help put that dam in—did you work on that dam that you saw last Thursday when it was built? [1208—1058]

A. No, I never worked on that dam since October 3d.

Q. You quit working on any dam on October 3d?

(Testimony of Gus Wachter.)

A. Yes; I did.

Q. And you worked on down the creek on the grade? A. Yes.

Q. About a week ago you saw the dam—when you saw it before a week ago—

A. I never was there before except on the 3d of October.

Q. You were up there on the 3d of October, and then you were up there last Thursday?

A. Yes, sir.

Q. And those are the only two times you have been up there where the dam is? A. Yes.

Q. When you were up there last Thursday did you notice any brushed out line up the hill from where the dam is? A. Yes, sir.

Q. On October 3d you had some people trying to keep you off of the ground up there, didn't you?

A. Yes, sir.

Q. And they drove you away once, didn't they, on October 3d?

A. Yes; they did all right; threw some rocks and everything on us.

Q. What did you think they were doing that for?

A. I couldn't tell you.

Q. Mr. Kinzie was up there, wasn't he?

A. Yes, sir.

Q. You were just obeying the orders of Mr. Kinzie?

A. I was working up there; Mr. Kinzie had a lead man, and Mr. Kinzie told the lead man what to do.

(Testimony of Gus Wachter.)

Q. And they ran you off once on that day, and then you went back again, did you? A. Yes, sir.

Q. How did you go up to this place where you say you put these [1209—1059] two logs across the creek and put some brush in—did you go up the Basin road, that well traveled road, or did you go up the creek bed?

A. Some go on the other side, on the left-hand side of the creek, and some of them go up on the right-hand side; I went on the right-hand side.

Q. You went on the right-hand side as you went up the creek? A. Going up the creek.

Q. You went up that way?

A. Yes; I passed the creek about 100 feet away from the dam, across the creek.

Q. About 100 feet from where the dam is now?

A. Yes; going across that way on the place we were working.

Q. Was the place where you crossed the creek 100 feet above where the dam is now or 100 feet below where the dam is now? A. Below.

Q. And then you crossed the creek there and went on up the creek? A. Yes.

Q. How far did you go up the creek that day from that point?

A. Went on the place we were working then.

Q. How did the people that belonged to your crew get up there, that went up on the left-hand side of the creek—did they go up the Basin road, or did they go up the old flume line of the Jualpa Company?

(Testimony of Gus Wachter.)

A. I don't remember all about the dam, because I don't remember about it.

Q. Where did you make that box or piece of flume that you put in on the 3d of October?

A. Made over there close to the dam.

Q. Now, don't you know that before October 3d there wasn't,—or on October 3d, there wasn't any place down below where this dam is now constructed that you could get across the creek,—didn't you cross above where the dam is now?

A. Down below where the dam is now. [1210—1060]

Q. Don't you know there wasn't any place there you could get across on October 3d?

A. Some places there was; yes.

Q. How did you get across?

A. Jumped across it.

Q. How many jumps did you have to make to get across it?

A. I can make it in one good jump, 10 feet or something like that—7 or 8 feet; I couldn't tell how long they are; some places it is pretty narrow there, you know.

Q. You say about 100 feet below where that dam is now that that is the place where you jumped over from one bank to the other? A. Yes, sir.

Q. Have you looked at that place lately—have you ever seen that place where you jumped over?

A. Yes, sir.

Q. Are you a pretty good jumper?

A. Not very good, but I can do that all right—

(Testimony of Gus Wachter.)

jump across that creek.

Q. You didn't get down in the water at all, didn't get wet? A. I didn't get wet; no.

Q. How did you get up where the falls were when you jumped over the creek?

A. Why, over the hill a little ways where that old flume is up there, and I walked some part of it on that water flume and some part of it along the hill-side.

Q. You jumped across, then, to the right-hand side as you went up the left-hand side of the creek, about 100 feet below where the dam of the Alaska-Juneau Company is now? A. Yes, sir.

Q. And didn't get wet?

A. I didn't get wet to amount to anything—working men always get wet some.

Q. You didn't fall in the creek or wade in the creek, or go in the creek up to your knees? [1211—1061] A. No, sir.

Q. Then you went on up to the falls in the creek on the right-hand side—how far did you go above the falls? A. To the place where the dam is.

Q. To the place where the dam is now?

A. To the place where the lead man said we go to work down below the present line where it is now, the same place, and we done the work on the same place.

Q. You didn't do any work above where the dam is now? A. No, sir.

Q. Were any of the boys that were with you doing anything up above where the dam is now?

(Testimony of Gus Wachter.)

A. I didn't watch anybody; I was working.

Q. What were you working at?

A. Working on the dam.

Q. What were you doing?

A. Drilling and doing what the lead man told me to do.

Q. What were you drilling on?

A. Some holes in a rock,

Q. In the middle of the creek was the rock or boulder, wasn't it?

A. I didn't tell you exactly it was in the middle; it was in the creek all right.

Q. It was in the creek bed? A. Yes, sir.

Q. You were told to drill a hole in that rock?

A. Yes, sir; I did.

Q. What were you going to do after you drilled a hole in it? A. Blast it.

Q. Did you blast it? A. I did.

Q. Was that on the 3d?

A. Yes. [1212—1062]

Q. Did you drill on any other rock that day, that you blasted?

A. We drilled two or three different places there.

Q. And blasted each place? A. No, sir.

Q. You didn't blast other places where you drilled? A. No, sir.

Q. But the boulder that was down in the creek that you first drilled on, you did blast?

A. Yes; we blasted that all right.

Q. Now, where were the other boulders you drilled on? A. Why, close to the box.

(Testimony of Gus Wachter.)

Q. Well, there wasn't any box in there then, was there?

A. Yes; we drilled the hole first and then put the box in on the same day.

Q. Did you put the box in just where you blasted out the rocks? A. No; on the side.

Q. On the side of where you blasted? A. Yes.

Q. Now, all that I understand you did on October 3d in regard to building a dam was to put two logs across the creek and put some brush in—now, those are the only two logs that you put in on the dam on the 3d? A. Yes, sir.

Q. Now, you didn't put any cross-pieces in on that day, did you?

A. Yes; we had two timbers on the cross-ways of the creek, and that timber was about one foot, or something like that.

Q. That is, you put the timbers in to hold these two logs together that you put across the creek?

A. Yes; to hold it up, like you hold your fingers—put one on top and one underneath.

Q. How long was that piece?

A. I would say about a foot—it might be a little over.

Q. It was just put in there to hold the logs apart?

A. Yes. [1213—1063]

Q. And you used those logs that you put in there to walk over on, didn't you, to cross the creek on?

A. No; we used the logs, and put the brush in and everything to hold it up to make the dam.

Q. Didn't you walk on it any?

(Testimony of Gus Wachter.)

A. We walked on it.

Q. Walked back and forth across the creek on those logs? A. Yes; we did.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1214—1064]

The plaintiff, to further maintain the issues on its part to be maintained, introduced as a witness in rebuttal B. D. STEWART, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of B. D. Stewart, for Plaintiff (In Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is B. D. Stewart? A. Yes.

Q. What is your business profession or occupation, Mr. Stewart? A. Engineer and surveyor.

Q. You are a mineral surveyor—a United States mineral surveyor? A. I am.

Q. With offices in Juneau, Alaska?

A. Yes, sir.

Q. Did you do any work for the Alaska-Juneau Gold Mining Company in the year 1910?

A. I did.

Q. Do you know where the Alaska-Juneau dam is? A. I do.

Q. When were you first at the place where the Alaska-Juneau dam now is?

(Testimony of B. D. Stewart.)

A. It was in the first week of November, 1910.

Q. Did you at that time survey the lower side line of the Lotta? A. I did.

Q. Do you know where the stakes in the ground were on the Lotta at that time, marking the south-erly side line of the claim? A. I do.

Q. What stakes were there—what corners were marked with stakes?

A. There were two corners marked for the Lotta.
[1215—1065]

Q. What were they?

A. One was the southwest corner and the other the northwest corner.

Q. What were the numbers of the corners?

A. They were in the places as called for corners No. 5 and No. 6.

Q. Now, did you survey the line across the creek between those two stakes? A. I did.

Q. Do you know where the lower side line of the Lotta as marked upon the ground by those two stakes would fall with reference to the position of the dam and intake of the Alaska-Juneau Gold Mining Company as it was upon the ground at that time?

A. I do.

Q. Do you know that from an actual survey and measurements made by you? A. I do.

Q. Where was the intake of the Alaska-Juneau Company's flume at that time as you found it upon the ground by an actual survey, with reference to the lower side line of the Lotta as marked by the stakes on the ground at corner No. 5 and corner No. 6?

(Testimony of B. D. Stewart.)

A. The intake was several feet below the line.

Q. Where was the dam as you found it upon the ground with reference to that line of the Lotta—that is, the line of the Lotta as marked by the stakes on the ground at corner No. 5 and corner No. 6?

A. The dam structure was below that line on the northeasterly bank of the stream; there was a bank of earth which angled up the creek a little, and part of that bank of earth was on the Lotta.

Q. How much of it was on the Lotta, as so marked?

A. I don't remember the exact amount—just a few feet; that bank of earth seemed to be a protection for that abutment of the dam, but my recollection is that the dam proper was [1216—1066] below the line.

Q. Now, Mr. Stewart, have you seen the dam since that time? A. I have.

Q. What changes, if any, have been made in the position of the dam on the ground?

A. The only change that I can observe is that the northwest end of the dam had been moved several feet down stream since that time.

Q. The northwest end—that would be the place where the dirt had been piled up on the Lotta?

A. Yes, sir.

Q. The balance of the dam and the intake is in the same position? A. Same position.

Q. Now, do you know whether any portion of the dam, as it now is, is on the Lotta claim as marked by those stakes upon the ground at corner No. 5 and

(Testimony of B. D. Stewart.)

No. 6? A. I believe I do.

Q. Is any portion upon the Lotta? A. No, sir.

Q. Mr. Stewart, I now direct your attention to a map marked and received in evidence as Defendant's Exhibit "B," and ask you to look at that and state if you are familiar with that map?

A. I think I am familiar with the original of it; this seems to be a copy.

Q. Who made the original?

A. I made the original.

Q. Do you know what that map is intended to show? A. Yes, sir.

Q. Please tell the Court what it is intended to show.

(Not answered because of objection.)

Q. What does the map show, Mr. Stewart?

A. It shows the position of several claims in the vicinity of the Ebner property in relation to Gold Creek and the Basin Road. The map, by means of circling of certain of the corners, [1217—1067] shows which points are defined by posts on the ground; and by the absence of those circles, corners which were arrived at in another way not indicated by posts; shows the dam and various other features of the topographic and artificial improvements.

Q. It shows the position of the Oregon lode on the ground? A. It does.

Q. It shows the claimed conflict between the Oregon lode and other claims in the neighborhood?

A. It does.

Q. Mr. Stewart, will you tell the Court whether

(Testimony of B. D. Stewart.)

you made that map with the view of showing the ground that actually belonged to the parties, or with the view of merely showing where each claim lay with reference to where the parties claimed it laid, without reference to their rights?

A. I made the map to show these claims merely as they were claimed by the parties without any reference to their rights.

Q. Now, Mr. Stewart, I will ask you if you are familiar with, and have made an actual survey of, the Lotta claim—are you familiar with that claim and whether you have surveyed it?

(Objected to.)

Q. Well, in 1910, did you make a survey of the Lotta claim? A. Yes.

Q. Are you familiar with the field-notes of the Lotta claim? A. I am.

Q. Are you familiar with the plat that is shown in the patent of the Lotta claim? A. I am.

Q. Are you familiar with the official plat in the Surveyor General's office, of the Lotta claim?

A. I am.

Q. Are you familiar with all the stakes on the ground, that are connected with the Lotta claim?

A. I am. [1218—1068]

Q. Are you familiar with the location of the stakes of the Colorado and other surrounding claims?

A. Those that are in the ground; yes, sir.

Q. Do you know where corner No. 5 of the Idaho is? A. I do.

Q. Did you observe the brushed out line in that

(Testimony of B. D. Stewart.)

vicinity in 1910? A. I did.

Q. Do you know the brushed out line connecting No. 5 and No. 6 of the Lotta? A. Yes.

Q. Did you do anything in the way of surveying the creek in 1910? A. I did.

Q. Do you know where the Lotta claim would fall upon the ground—where it would light upon the ground if surveyed in accordance with the field-notes given in the patent, and the ties and calls given in the patent? A. I do—I think I do.

Q. Do you know what the calls in the patent are, as shown in the patent plat attached to the patent?

A. Aside from the courses and distances I believe there is only one call.

Q. What call is that?

(Objected to.)

Q. Directing your attention to the patent of the Lotta as it is in evidence in this case, marked Defendant's Exhibit "U," I direct your attention to that as being the patent of the Lotta claim, and also to the plat that is shown in that patent. Now, directing your attention to that patent, Mr. Stewart, the Lotta claim there is tied to Gold Creek, is it not?

A. It is.

Q. Is the Lotta claim tied to any other natural object in the description given in that patent?

A. No, sir. [1219—1069]

Q. Now, when did you survey the Lotta claim?

A. November, 1910, first.

Q. Did you ascertain at that time where the claim would lie if surveyed in accordance with those patent

(Testimony of B. D. Stewart.)

notes, giving effect to the ties in the creek as shown in the patent? A. I did.

Q. Now, Mr. Stewart, is the claim as so surveyed shown upon Defendant's Exhibit "B"?

A. Yes, sir.

Q. It is? A. Yes.

Q. Do you know where the point was where the Mulligan water notice was posted?

A. I am not familiar with that point.

Q. You don't know that point? A. No, sir.

Q. You may indicate to the Court how the claim as surveyed according to the field-notes as contained in the Lotta patent, and with reference to the tie in Gold Creek, the only tie to a natural object contained in the patent, as to how it would fall upon the ground,—on Defendant's Exhibit "B."

A. It would fall upon the ground as indicated upon this map in green lines, and the northeast side line of the Lotta as it so falls, is marked "N. E. side line of Lotta, according to Patent Notes."

The COURT.—Those are the only green lines on the plat?

A. They are the only green lines which purport to show the Lotta claim.

Q. The green line that you have testified to as being the line of the Lotta is the one marked with the legion you have just referred to? A. It is.

Q. Do you know where the Colorado claim lies?
[1220—1070] A. I do.

(Testimony of B. D. Stewart.)

Q. Is the Colorado claim tied to the Lotta claim in the field notes?

(Not answered because of objection.)

Q. I will just ask the general question—Mr. Stewart, as tied to any of the surrounding claims, whether the Colorado or any other claim, would the Lotta claim fall upon the ground at the place where it is marked by the stakes in the ground at No. 5 and 6?

(Objection.)

Mr. HELLENTHAL.—The question I am asking this witness, your Honor, at the present time is this: Is there any stake or corner on the ground, of any claim, it makes no difference what claim, to which the Lotta lower side line can be tied according to the description as given in the official notes in the Surveyor General's office and carried into the patents of the various claims, so that the side line of the Lotta will fall where it was brushed out upon the ground and marked by these stakes?

The COURT.—I think he may answer that question, if he knows.

A. I don't know of any such stakes; no. I am not very familiar with all the patent stakes up there.

Q. You have run lines over all the various patent stakes?

A. I think so—all those that were in existence in 1910.

Q. There was no stake or monument upon the ground of any claim to which you can tie that claim, is there?

(Testimony of B. D. Stewart.)

A. By observing the notes they would show whether you could follow the notes out—

Q. The question is this: Whether that line as marked upon the ground will check with any stake, monument, mark, call or tie as given in the notes or as marked upon the ground of other surveys, other than the Lotta? A. No, sir. [1221—1071]

Q. None whatever? A. No, sir.

Q. Mr. Stewart, have you been up on the Lotta line lately? A. I have; yes, sir.

Q. Do you know where corner No. 3 of the Lotta is? A. I do.

Q. As marked upon the ground?

A. I do; yes, sir.

Q. Do you know where stake No. 3 stood in 1910?

A. I do.

Q. Do you know where the cement or concrete pier now is that is supposed to mark that corner?

A. I know where a concrete pier is in that vicinity.

Q. Does that concrete pier and this stake No. 3 still stand in the same place it did in 1910?

A. It does—same position.

Q. How far is that concrete base or pier from that corner No. 3?

A. It is about 14 feet up the hill—that is, measured on a horizontal place.

Q. About 14 feet from it?

A. Up the hill, northeast.

Q. Directing your attention now to a photograph marked Plaintiff's Exhibit No. 37, I will ask you to look at it and state what that is, if you know?

(Testimony of B. D. Stewart.)

A. The photograph marked exhibit No. 37 indicates in the foreground the post for corner No. 3, of the Lotta, as it existed in 1910, and as it still exists in the same place. This stake is in the foreground of the photograph, and some of the markings in black paint can be made out upon it. In the background is the post which is set in a large pile of stone and concrete. This concrete pile or pier that the post is set in is probably 4 feet square at the base and stands about 3 feet high. [1222—1072]

Q. You took that picture yourself? A. Yes.

Q. When was it taken?

A. It was taken last Sunday, the 2d of August.

Q. Directing your attention now to a photograph which is marked Plaintiff's Exhibit No. 36, I will ask you to look at that and state who took that picture. A. I took that picture.

Q. When did you take that,—the same day?

A. The same day.

Q. What does that show?

A. That shows the same post and the same concrete or cement pier that shows in the background in picture No. 37.

Q. At closer range? A. Yes, sir.

Q. Calling your attention to a photograph marked Plaintiff's Exhibit No. 35, I will ask you if you took that photograph? A. I did.

Q. When was that taken?

A. The same day as the others.

Q. What does that show?

(Testimony of B. D. Stewart.)

A. It shows the old post for corner No. 3 as it is in the ground, and it is the same post as appears in the foreground in exhibit No. 37.

Mr. HELLENTHAL.—I will offer these photographs in evidence.

(Whereupon said photographs were received in evidence and marked, as originally marked for identification, Plaintiff's Exhibits Nos. 35, 36 and 37.)

Mr. HELLENTHAL.—You may cross-examine.
[1223—1073]

Cross-examination.

(By Judge WINN.)

Q. These three photographs that were just last presented to you, by Mr. Hellenthal, Mr. Stewart, all represent the same corner post, do they not?

A. I don't get your full question, Judge.

Q. I say these three pictures that Mr. Hellenthal just presented to you all represent the same corner post, don't they?

A. There are two different posts that appear in the photographs—two different posts; exhibit 37 shows both; in exhibit 35 one appears, and in exhibit 36 another appears.

Q. I wish you would look at this exhibit "S" which has been offered in this case, and state if those photographs show the corner posts that are marked there in red along on the side and end lines of the Lotta claim?

A. Well, exhibit No. 35 represents corner 3 of the Lotta as it appears upon the ground, indicated by a post, of which picture 35 is a photograph.

(Testimony of B. D. Stewart.)

Q. That is—what do you call it,—what corner stake of the Lotta does No. 3 represent on this Defendant's Exhibit "S"?

A. It is presumed to stand for that corner.

Q. How did you say that corner post is marked?

A. It is marked, as I recall, "U. S. S. 87" on one side, and "U. S. S. No. 88" on the other.

Q. You say that stake was there in 1910?

A. It was the same stake in the same place.

Q. When did you first see it there in 1910?

A. November.

Q. November was the first time that you were asked to go up there to make any survey in reference to the Lotta claim? A. Yes. sir.

Q. 1910? A. 1910. [1224—1074]

Q. That survey that you made at that time, and the map which Mr. Hellenthal has referred to, is the map that was made for the purpose of the trial before Judge Cushman, wasn't it?

A. I believe so; yes.

Q. Now, let's get the other stake that you have there in one of those pictures, Mr. Stewart.

A. Exhibit No. 36 shows a stake that is about, as I have indicated, 14 feet northeast of the post which appears in No. 35.

Q. Northeast of post No. 3?

A. Of the old post No. 3 as it stands in the ground.

Q. And that is the monument you say is built there—what is it built of?

A. Rock, cement and concrete.

Q. That is the corner post these photographs refer

(Testimony of B. D. Stewart.)

to? A. This is the corner post.

Q. Now, then, Mr. Stewart, you were never up on the Lotta claim before you made the survey in November, 1910? A. Never was; no, sir.

Q. How long have you been here, Mr. Stewart?

A. I have been here going on 4 years—4 years in October.

Q. You have been in the employ of the Alaska-Juneau Company ever since you have been here, haven't you? A. I have not; no, sir.

Q. How long have you been in the employ of the Alaska-Juneau?

A. I have been employed intermittently by them to do various work ever since I have been here.

Q. You do all their surveying over on this side of the channel, don't you? A. I don't; no, sir.

Q. Hasn't it all been done under your charge since you have been here? A. It has not; no, sir.

Q. What surveying have you been doing for the Alaska-Juneau and [1225—1075] Treadwell since you have been here?

A. I have done a great deal of surveying of different kinds for the two companies.

Q. You have been almost giving your entire time, the last two years to surveying over on this side of the channel upon the properties of the two companies, haven't you?

A. I have been giving it a great deal of time—not all of it.

Q. What other surveying have you been doing?

A. I have been doing quite a lot for other people.

(Testimony of B. D. Stewart.)

Q. Surveying for patents? A. Yes, sir.

Q. Do you work for them by the month or how?

A. I work for them by the day, whatever time I put in for them.

Q. What is the surveying that you have been doing on this property the last two years?

A. Mostly patent work.

Q. Surveying for patents?

A. Surveying for patents.

Q. And surveying some of these claims that belong to the Alaska-Juneau Company?

A. Some of them; yes, sir.

Q. About what proportionate part of the time have you devoted to their work in the last two years?

A. Oh, probably 90 per cent.

Q. Were you, in the months of July and August, in the employ of the Alaska-Juneau Company?

A. July and August?

Q. Yes. A. I was not; no, sir.

Q. When did you commence to work for them in the year 1910?

A. It was about the 10th of October, I believe—about the 10th.

Q. Had you been working for the Treadwell before that?

A. Never had done any work for them before that.

[1226—1076]

Q. What had you been doing, Mr. Stewart?

A. Prior to 1910, immediately prior to that, I had an independent office in Missoula, Montana.

Q. You didn't come here until what date in 1910?

(Testimony of B. D. Stewart.)

A. The 16th of August, I believe it was.

Q. And as soon as you came here, did you commence gathering data for the trial of that ejectment suit on the Lotta and the Parish No. 2?

A. I did not; no, sir.

Q. You were a witness in that case, weren't you?

A. I was a witness; yes, sir.

Q. And you had this same map and plat that Mr. Hellenthal has been questioning you concerning, and you testified from that in that case, didn't you?

A. I made the map from which that is copied; yes, sir.

Q. Your contention at that time was that there wasn't any such claim in existence as the Lotta claim?

A. I don't remember that I made any contention.

Q. According to your map there, you recognize what portion of the Lotta claim you contended was in existence when you testified in that former case, don't you?

A. I don't recognize any particular portion as being in existence that I know of, on that map; I represented what I considered would be the position of the Lotta regarding it in various days.

Q. Then what was your object in making those illustrations that you did, putting in the different positions of the Lotta claim—was it to show that the Mulligan notice was not on the Lotta claim, or was it to show that there wasn't any such claim existing as the Lotta claim?

A. The claim as shown on that map had no refer-

(Testimony of B. D. Stewart.)

ence whatever to the Mulligan notice or any other thing, only to show where the Lotta would be under different conditions as indicated on the map.

[1227—1077]

Q. Now, then, Mr. Stewart, I want you to take the United States patent, a copy of which is offered in evidence in this case, and I will ask you if the Lotta survey No. 87 is not included in that group of surveys that were made at the same time for patent,—that is true, isn't it?

A. It is shown in the map in conjunction with a number of other surveys, apparently.

Q. You have read over that patent, haven't you, that you have in your hand? A. Yes.

Q. You have gone over it to ascertain what ties the Lotta has to any other natural object, have you not?

A. I have.

Q. Now, then, when Mr. Hellenthal asked you these questions as to how many ties the Lotta claim had, what part of the field-notes in this patent did you refer to when you made that answer?

A. As I understood his question, he referred to the Lotta and I referred to the Lotta claim in my answer.

Q. I wish you would turn over and read the part of the description of the Lotta claim that you made your answer to that question from.

A. "Beginning for the description of Lot No. 87, at a post marked No. 1, U. S. Survey No. 87"—

Q. That is on what page of this exhibit which has been offered in evidence, Mr. Stewart, as the patent

(Testimony of B. D. Stewart.)

in which the Lotta claim is one of the claims that was patented—on what page?

A. On page marked 1772, and includes, exclusive of the fractional line at the top of the page, includes lines 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.

Q. What are the names of the other claims which are set forth in the field-notes of that patent? [1228—1078] A. Included in the same description?

Q. Yes, sir.

A. Taku Gold and Silver, Keystone, the Crown Point, the Golden Fleece, the Grand Review and the Jewel, indicated as being surveys Nos. 88, 89, 90, 92, and 93, respectively.

Q. Now, I will ask you, Mr. Stewart, those claims you know to be all in one group, and contiguous and adjacent, don't you? A. According to what?

Q. According to the surveys and what you know of the ground,—don't you know where those claims are on the ground?

A. Yes; I know where they are staked—where the stakes are on the ground.

Q. You know they are patented, don't you?

A. Yes, sir.

Q. They are the claims as indicated on Defendant's Exhibit "S," and are shown to be all contiguous and adjacent claims, and constitute one group?

A. They are so shown on that map.

Q. Don't you know from surveys you have made, that this is a group of claims that was surveyed all at one time for patent?

(Testimony of B. D. Stewart.)

A. Not altogether at the same time; they were surveyed at different times.

Q. I mean this is one survey made, and you know it to be one survey made for a patent, and that according to the rules, the applications were made all at the same time and it went through to patent and came out in the same patent?

A. I presume they were all patented together from the fact that they are all contained in one patent.

Q. Now, then, Mr. Stewart, if you, as a disinterested professional surveyor, were called upon to go upon the ground to ascertain the location of a mining claim, provided it was a mining claim that was patented with a group, would you go and take the field-notes, and pick them alone out of the patent, and [1229—1079] segregate them from the field-notes of other claims that are described in the patent, and simply try to ascertain what calls one of those claims had in order to locate it on the ground,—would you pursue that method?

A. I would have regard for the rest of the claims if the evidences on the ground warranted it, I think.

Q. Well, now, you know, Mr. Stewart, that in 1910 when you went upon the ground that corner No. 5 as indicated upon Defendant's Exhibit "S" was there, don't you?

A. The post that is there now was there; yes, sir.

Q. And you know following on up the side line of the Lotta claim, as indicated on Defendant's Exhibit "S," that the corner post which is on the side line of the Lotta and which is a little bit below the

(Testimony of B. D. Stewart.)

corner No. 6 was on the ground in 1910, don't you?

A. I know that there was a post which I presume you refer to, there at that time, Judge; it wasn't on the line of the Lotta, as I recall it; it was marked for corner No. 4 of the Forrest, and as far as I know it had no particular reference to the Lotta claim. I never regarded that as having any particular reference to it; it was there and marked on one side No. 87.

Q. Now, then, that is the Lotta survey, isn't it, U. S. Survey No. 87? A. Yes, sir.

Q. Now, if you were going on there in a disinterested way—not trying to throw anything out of shape, but as a disinterested party, acting absolutely fair with everybody, if you had seen a stake there in 1910 and undertaken to locate the Lotta claim, you would have taken that as evidence of some fact as to where the Lotta claim was, wouldn't you?

A. I will say no. May I explain that answer? Not such a post as that; no, sir. [1230—1080]

Q. Now, if there was a particular stake up there, Mr. Stewart, on which was U. S. Survey No. 87, don't you think, if you were acting in good faith as a surveyor, you would take that as evidence that there must be a Lotta claim in that neighborhood, and that that was a corner post?

A. I would regard it as sufficient to investigate it further.

Q. Now, was there any corner post in 1910 when you went on there, of the Lotta, that marked corner No. 6?

(Testimony of B. D. Stewart.)

A. There was a post—a post similar to corner No. 5.

Q. Was there anything written on that post?

A. No, sir; there was scribe marks on it.

Q. What were those scribe marks on it?

A. As near as my recollection serves me, “Cor. 2 Etta”; I am not so sure that the name was on it; anyway, “S. 545,” and on one side “S. 87,”—Something like that; I wouldn’t say those were the exact markings, but approximately.

Q. You know that the Lotta claim is survey No. 87, and have always known it ever since you made any investigations in this matter, don’t you?

A. Yes, sir.

Q. Now, then, have you examined the decree of Judge Cushman in this case to ascertain whether or not he located the Lotta lower side line according to stakes Nos. 5 and 6?

A. I believe I have; yes, sir.

Q. And he located it according to these numbers 5 and 6 as they were in 1910, didn’t he?

A. I believe he indicated that line as they were in 1910.

Q. Now, then, what other stakes besides these I have mentioned did you see there when you were on the Lotta claim in 1910?

A. I saw the old post for corner No. 3, and also for corner No. 4.

Q. I believe you gave how corner No. 3 was marked. Was corner No. 4 marked? [1231—1081]

A. It was, and it is still there.

(Testimony of B. D. Stewart.)

Q. How was it marked?

A. As I remember, it was marked with black paint, "U. S. S. 87"; I don't believe the number of the post was legible.

Q. But the matters you have read were on it?

A. As I remember; yes, sir.

Q. Did you, when you went on there for the first time in November, 1910, see a cabin down near corner post No. 5 of the Lotta claim? A. I did.

Q. Did you ever look up in the field-notes to see whether or not corner No. 5 is tied to corner No. 4, in the field-notes of the survey?

A. I never noticed any such tie as that—don't recall it.

Q. I will ask you, Mr. Stewart, to take the patent which you have there, and I want you to find how many ties there are altogether in this consolidated survey of these claims—I will ask you if there is not a following tie, and that they would all be of assistance to you in locating the Lotta Lode Claim upon the ground as it has been determined to exist? Will you find corner No. 1—what corner post of the Crown Point as it is described in the field-notes of the patent would it tie to? A. Corner No. 1?

Q. Yes, sir; of the Crown Point.

A. Corner No. 2 is tied to U. S. Mineral Monument No. 2.

Q. Is corner No. 2 also tied to the Ebner stamp-mill?

(Testimony of B. D. Stewart.)

A. It doesn't give any tie from the stamp-mill here.

(Whereupon court adjourned until 2 P. M.)

[1232—1082]

AFTERNOON SESSION.

August 7, 1914, 2 P. M.

B. D. STEWART on the witness-stand.

Cross-examination (Cont'd).

(By Judge WINN.)

Judge WINN.—This is a map and plat, if your Honor please, that was apparently offered in evidence on the preliminary hearing. I expected to offer it in evidence upon our surrebuttal, but I desire very much to call Mr. Stewart's attention to it on cross-examination; if you want me to, I will first offer it in evidence by my own witness. I want to question Mr. Stewart on it and then afterwards follow it up and show the authenticity of it.

The COURT.—Very well.

Judge WINN.—I wish to have this exhibit marked for identification, if your Honor please.

(Whereupon said exhibit was marked Defendant's Exhibit "K-2" for identification.)

Q. Now, I understand, Mr. Stewart, that you stated in answer to Mr. Hellenthal's question, and in answer to all of his questions concerning these boundaries, corner posts, and so forth, of the Lotta, that you were bearing in mind simply the field-notes of the Lotta claim as it is set out in this patent, and you didn't take into consideration any of the field-notes, courses and distances of other claims that were

(Testimony of B. D. Stewart.)

patented in the same Lotta group?

A. I took them into consideration; yes, sir.

Q. When you were answering Mr. Hellenthal's questions? A. Yes, sir.

Q. Did you say this morning when I presented the patent to you that you only took into consideration the field-notes which are represented on page 1772 of the patent? [1233—1083]

A. I said that in reply to your question; yes, sir.

Q. Now, how is it—did you just simply take into consideration the field-notes as they appear on page 1772 of the patent that is offered in this case, or did you take into consideration, in answering Mr. Hellenthal's questions, all of the field-notes, courses and distances and ties as they are set forth in this patent?

A. I took them all into consideration; particularly the notes that he called my attention to specifically.

Q. Now, then, I hand you this patent, Mr. Stewart; you observe on page 1771, which is part of that patent, as follows, don't you: "There has been deposited in the General Land Office of the United States the plat and field-notes of survey and the Certificate No. 16 of the ex-officio Register of the Land Office at Sitka, Alaska, accompanied by other evidence whereby it appears that Samuel Coulter did, on the tenth day of June, A. D. 1889, duly enter and pay for that certain mining claim or premises, known as the Lotta, Taku Gold and Silver, Keystone, Crown Point, Golden Fleece, Grand Review and Jewel Lode Mining Claims, designated by the ex-officio Surveyor General as Lots Nos. 87, 88, 89, 90, 91, 92, and 93, re-

(Testimony of B. D. Stewart.)

spectively"—now, you know from the reading of this patent so far, and reading through the rest of it, that all those claims were included in one survey, don't you?

A. It is apparent that they were included in one application for patent; that is all I gather from that.

Q. Well, then, when you read on, the field-notes,—have you read them through, commencing on page 1772? A. Yes.

Q. Don't you know that every one of those claims, when they are surveyed up, will tie to one another?

A. I do not; no.

Q. Now, then, in order to get at that we will read it over: [1234—1084] "Beginning for the description of Lot No. 87, at a post marked No. 1, U. S. Survey No. 87"—now, do you know where that post is?

A. Post No. 1?

Q. Yes, sir. A. It is obliterated, I believe.

Q. I will ask you to look on Defendant's Exhibit "K-2" for identification, which purports to cover these mining claims that I have just given the name of in the patent, and ask you if corner No. 1, which is marked in red at the upper end line of the Lotta, is not the corner post that you understand that survey commences at? A. It is not; no, sir.

Q. What do you understand to be the corner post that the survey commences at in the field-notes?

A. I don't think there is any corner post in existence where that commences at.

Q. There is not any corner post up here marked No. 1? A. No, sir.

(Testimony of B. D. Stewart.)

Q. Now, I wish you would tell the Court—take those field-notes you have in your hand and commence reading, and tell the Court where this survey commences from.

(Not answered because of objection.)

Q. Now, I will call your attention to Defendant's Exhibit "S," and ask you to take those field-notes and a ruler. Can you ascertain from those field-notes where the survey commences?

A. Only from the ties that are given in the notes; I couldn't tell from that map where corner No. 1 is.

Q. Can you look at this map, or take the map that is attached to the patent in your hand, and tell where the beginning place is in that patent?

A. I can by utilizing the ties given in the notes.

Q. Well, let me see you do it; taking for granted that this [1235—1085] Defendant's Exhibit "S" is a correct survey of this patent I have read off to you, where do you say that survey commences?

A. I don't think I can show it very accurately on that map.

Q. Approximately, then.

A. From the ties that are given in the notes?

Q. I don't want any ties given in the field-notes. You said that you know where the Lotta Lode Claim has been located by the decision of Judge Cushman.

A. Yes, sir.

Q. Now, taking for granted that is true, and that is the true location of the Lotta claim, where do you say that beginning point is from the field-notes in the patent?

(Testimony of B. D. Stewart.)

A. As I understand his decision, these two corner posts 5 and 6 mark the corner posts on the ground; and No. 1, according to his decision, would be 150 feet east from that post 6.

Q. Then, this corner here is marked (indicating).

A. However, there is no post there on the ground.

Q. Now, the commencement of that survey would be at a point at what distance from corner post No. 6, on this Defendant's Exhibit "S"?

A. I think the Judge says 150 feet.

Q. Now, then, you know, Mr. Stewart, that commencing at that point and running a certain distance, what is the next course run, considering that is No. 1? A. Same course, I believe.

Q. "Thence, first course, North fifty-six degrees and fifteen minutes east one hundred and fifty feet to a post marked No. 2, U. S. Survey No. 87."

A. You are referring now to these patent notes?

Q. Yes, sir. Now, which way is he running?

A. Northeast; same course as the other.

Q. "To a post marked No. 2, U. S. Survey No. 87. Thence, second course, south thirty-three degrees and forty-five minutes [1236—1086] east one thousand five hundred feet to a post marked No. 3 U. S. Survey No. 87." What course is he running there—is he running on the upper side line of the Lotta, or is he continuing in a northeasterly direction?

A. Running on the upper side line of the Lotta—supposed to be.

Q. "Thence, third course south fifty-six degrees and fifteen minutes west one hundred and fifty feet

(Testimony of B. D. Stewart.)

to a post marked No. 4 U. S. Survey No. 87, three hundred feet to a post marked No. 5 U. S. Survey No. 87." Then that course is supposed to be coming down the southeasterly line of the claim, isn't it?

A. Supposed to be.

Q. "Thence, fourth course, North thirty-three degrees and forty-five minutes west one thousand five hundred feet to a post marked No. 6 U. S. Survey No. 87." That is supposed to go from post No. 5 up to post No. 6, isn't it—in that direction?

A. Yes, sir.

Q. "Thence, fifth course, north fifty-six degrees and fifteen minutes east one hundred and fifty feet to post No. 1, the place of beginning"—that is supposed to get back to the center end line of the Lotta claim, isn't it? A. Supposed to; yes.

Q. "Said lot No. 87, extending one thousand five hundred feet in length along said Lotta vein or lode and containing ten acres and thirty-three hundredths of an acre." Now, commencing the next one—"Beginning for the description of Lot No. 88," which is the Taku Lode Claim, isn't it?

A. Taku Gold and Silver, I believe, is the name of it,—not Taku—Taku Gold and Silver.

Q. Marked on this exhibit "S" as Taku?

A. Yes; but that is not the name in the patent.

Q. This is the same claim, isn't it? [1237—1087]

A. I suppose it is.

Q. Have you made a survey all over that property? A. No; never to find any mining claim.

Q. But you know that the Taku is the same as the

(Testimony of B. D. Stewart.)

Taku Gold and Silver, don't you?

A. I suppose that is what is intended to be represented on that map; I don't know.

Q. Don't you know from your surveys up there that wherever the Lotta may be, the Taku has a common side line with it, up there?

A. Now, that depends on what determines the side line. According to the plat and according to the way the field-notes read, it is intended to have a common side line.

Q. Now, you know that Judge Cushman located the Lotta claim, don't you? A. Yes, sir.

Q. Now, let's take that as true for argument's sake if for nothing else, and let us follow this on up,—“Beginning for the Description of Lot No. 88 at a post marked No. 1. U. S. Survey No. 88, from which a ten-stamp mill bears south forty-nine degrees and thirty minutes east one hundred and forty feet distant”—do you know where that mill is?

A. I know where there is a mill building there; yes.

Q. Then you are running up this line, and then he makes a call to the mill building? A. Yes, sir.

Q. Tied in to the mill building? A. Yes, sir.

Q. That is one tie that is in that group of claims?

A. Yes; it doesn't give any definite point on that mill building.

Q. You can explain that to your attorney, but that is one tie which is just about as definite as any tie you took; the only two ties you took, you came down on the Lotta lode claim and [1238—1088] took a call

(Testimony of B. D. Stewart.)

and commenced some place on the creek? A. I did.

Q. To the bank or the center of the creek?

A. Center of the creek.

Q. Isn't a call to a mill building pretty near as good as a call to the bank of a creek?

A. I don't think it is.

Q. In this case you think that is an exception?

A. I do.

Q. "Thence, first course, north fifty-six degrees and fifteen minutes east one hundred and twenty-seven and eighty-five hundredths feet intersect the southwest boundary line of Lot No. 76B. at North forty-five degrees west one hundred and seventy-four and nine-tenths feet from post No. 1 of said claim, three hundred feet to a post marked No. 2 U. S. Survey No. 88." That is another tie you have with the Webster mill site, which has a common side line with these claims? A. Such a tie as it is.

Q. Don't you think it is a pretty good one?

A. That depends on the position of the claim.

Q. Now, let's go ahead and see if that again intersects that mill site,—“Thence, second course, south thirty-three degrees and forty-five minutes east seventy-nine and three-tenths feet intersect southeast boundary line of said Lot No. 76B at north twenty-two degrees and thirty minutes east one hundred and sixty-six feet from post No. 1 of said claim, eight hundred feet to a point from which tunnel No. 1 bears south nineteen degrees east thirty-five feet distant, and tunnel No. 2 bears south seventy degrees east seventy feet distant one thousand

(Testimony of B. D. Stewart.)

five hundred feet to a post marked No. 3 U. S. Survey No. 88"—do you know where there is any tunnel up there in this neighborhood we are talking [1239—1089] about now?

A. There is a tunnel up there; yes, sir.

Q. Do you see them on this map here?

A. I see it indicated; it isn't indicated as having any number on it; I don't know which tunnel No. 1 is.

Q. Well, taking for granted that the tunnel which is marked on here on the Keystone lode claim on Defendant's "S" is the tunnel that is referred to, that is a tie, isn't it, to a natural object?

A. Yes; that is survey No. 89 tied on survey No. 89.

Q. Is a tunnel anything like a good tie?

A. It has been my experience that some tunnels are very poor ties.

Q. What do you know about this tunnel—have you ever been up to see this tunnel?

A. It is on a very steep hillside, a place where I would say the portal of the tunnel could very easily change?

Q. You have never examined it?

A. I have examined it.

Q. In 1910? A. Yes.

Q. That was the first time you ever examined it?

A. Yes, sir.

Q. You don't know whether it remains in the same condition or not? A. No, sir.

Q. "Thence, third course, south fifty-six degrees and fifteen minutes west three hundred feet to a

(Testimony of B. D. Stewart.)

post marked No. 4 U. S. Survey No. 88, from which a tunnel bears north thirteen degrees west two hundred and thirty-one feet distant, six hundred feet to a post marked No. 5 U. S. Survey No. 88, being also post No. 3 of Lot No. 87, hereinbefore described.”

[1240—1090] Now, you have got another tie in that upper claim above the Lotta to another tunnel, haven't you, and you have got it tied down to one of the stakes of the Lotta, haven't you?

A. It is tied through survey No. 88, yes; a later survey, apparently.

Q. A latter survey—the application for patent all went through at one time, and the survey is all made by one man, isn't it?

A. I understand so; yes, sir.

Q. Now, let's see if we can find any other ties in this survey—“Thence fourth course, north thirty-three degrees and forty-five minutes west one thousand five *hundred* to a post marked No. 6 U. S. Survey No. 88, being also post No. 2 of said Lot No. 87.” Now, the next one after that we have, “Thence, fifth course, north fifty-six degrees and fifteen minutes east three hundred feet to post No. 1, the place of beginning; said Lot No. 88 extending one thousand five hundred feet in length along said Taku Gold and Silver vein or lode, and containing exclusive of the conflict with said Lot No. 76 B, twenty acres and twenty hundredths of an acre.” Now, here is another one, Lot No. 89—“Beginning for the description of Lot No. 89, at a post marked No. 1 U. S. Survey No. 89. Thence, first course, north fifty-six de-

(Testimony of B. D. Stewart.)

degrees and fifteen minutes east one hundred and fifty feet to a post marked No. 2 U. S. Survey No. 89,"—we are going right on up the same direction, are we not, for the Keystone, as these other courses and distances of the Lotta and the Taku?

A. The description is the same.

Q. Going right on up in the same direction, the same number of degrees and the same angle?

A. Same bearing.

Q. "Thence, second course, south thirty-three degrees and forty-five minutes east one thousand five hundred feet to a post marked No. 3 U. S. Survey No. 89. Thence, third course, south [1241—1091] fifty-six degrees and fifteen minutes west one hundred and fifty feet to a post marked No. 4 U. S. Survey No. 89, three hundred feet to a post marked No. 5 U. S. Survey No. 89, being also post No. 3 of Lot No. 88, hereinbefore described"—now, we have tied the Keystone lode, which is No. 89, to the Taku lode, which is survey No. 88, just below the Keystone, isn't it?

A. The notes and the description tie them; yes, sir.

Q. "Thence, fourth course, north thirty-three degrees and forty-five minutes west one thousand four hundred and twenty feet and seven-tenths feet intersect southeast boundary line of said Lot No. 76B"—that is somewhat of a call, isn't it, the same as a call would be the creek—you intersect the side line of another claim, don't you? A. Supposed to.

Q. The field-notes read that you do do it, don't they? A. The field-notes read that you do.

(Testimony of B. D. Stewart.)

Q. That is what I want to know—leave out the suppositions; then that distance is “one thousand five hundred feet to a post marked No. 6 U. S. Survey No. 89, being also post No. 2 of said Lot No. 88,”—there is another common corner of those two lots or claims, is it not? A. From the description.

Q. “Thence, fifth course, north fifty-six degrees and fifteen minutes east one hundred and eighteen and sixty-five hundredths feet intersect south east boundary line of said Lot No. 76B’”—there is another call, isn’t it, the same as the call to the creek on the Lotta—simply a call? A. It is a tie.

Q. We will come to ties afterwards; Mr. Stewart, let me understand you now—do you have any distinction between calls and ties—have you ever made any surveys for cannery sites in this country? [1242—1092] A. No, sir.

Q. Never examined any such surveys?

A. Never did.

Q. Suppose you were making a survey for a cannery site, in the first place you would commence at an initial point and tie it up to some well-known monument, wouldn’t you?

A. I am not acquainted with nonmineral surveys.

Q. You never made any nonmineral surveys at all?

A. No, sir.

Q. You are a mineral surveyor?

A. Mineral surveyor, not a nonmineral surveyor; they are two distinct things.

Q. Say, for instance, you are running a line north 25 degrees, and so on, in a certain way, and say then

(Testimony of B. D. Stewart.)

you strike the corner of a building and then you continue on, you call that a tie, do you?

A. Yes; it would be a tie; I am just as careful in giving those as I am any other tie.

Q. You are just as careful in giving those as you are in the first place in having some initial point to start from? A. Just the same.

Q. Now, don't you know, Mr. Stewart, when you start at an initial point, you tie that up to some well-known monument, natural object, mountain-top, United States survey post that has been established, or tie it up to some post on some patented claim—that is the way you do when you start to get an initial point to start out and survey?

A. You include in your question a tie to a mountain top—I never tied to anything as indefinite as a mountain top.

Q. You wouldn't, but a sharp mountain peak does make a good tie, doesn't it?

A. I never saw a peak that would be sharp enough to tie to it.

Q. You haven't passed through the Surveyor General's office [1243—1093] and examined some of those surveys, have you? A. No.

Q. You wouldn't swear that there are no surveys tied to a mountain peak, would you? A. No.

Q. What you mean by a tie is that you follow a course from a given point, and after you leave that given point you strike a natural object and say that is so many feet away from the place you start?

A. That is one kind of a tie. There are different

(Testimony of B. D. Stewart.)

kinds of ties—ties to objects or things which are off the line entirely, and the other class of ties are ties which are met with in running off the claims.

Q. Then, when we are running along this upper end line of a bunch of claims that are patented together and we strike the end lines of some claim at a certain post, that is a tie?

A. That is an indirect tie, because it is tied through the corner of one claim into another claim; it is not as definite a line as a direct tie would be, meeting with some natural object.

Q. Well, now, let's begin with No. 90: "Beginning for the description of Lot No. 90, at a post marked No. 1 U. S. Survey No. 90. Thence, first course, north fifty-six degrees and fifteen minutes east one hundred and fifty feet intersect west side line of Lot No. 91, hereinafter described, at north thirty-three degrees and forty-five minutes west eight hundred and seventy-eight feet from post No. 5 of said claim, two hundred and twelve feet to a post marked No. 3 U. S. Survey No. 90, from which U. S. Mineral Monument No. 2 bears south sixty-five degrees and thirty-seven minutes east six thousand five hundred and thirty and six-tenths feet distant"—that is another tie, isn't it?

A. Yes; that is another tie, a distant tie—that is a different [1244—1094] class.

Q. There are none of them as good as a creek-bed, are they? A. I don't think so, in this case.

Q. "Thence, second course, south thirty-three degrees and forty-five minutes east eight hundred and

(Testimony of B. D. Stewart.)

seventy-eight feet intersect west side line of Lot No. 91"—that is another tie, isn't it?

A. Yes, that is an indirect tie.

Q. "At north fifty-six degrees and fifteen minutes east sixty-two feet from post No. 5 of said claim, one thousand one hundred and ten and two-tenths feet intersect west side line of Lot No. 92, hereinafter described"—that is another call or tie, isn't it?

A. Yes, sir.

Q. "At south forty-eight degrees and forty-two minutes east two hundred and forty and three-tenths feet from post No. 6 of said claim, one thousand five hundred feet to a post marked No. 3, U. S. Survey No. 90. Thence, third course, south fifty-six degrees and fifteen minutes west two hundred and twelve feet to a post marked No. 4 U. S. Survey No. 90, three hundred and sixty-two feet to a post marked No. 5 U. S. Survey No. 90, being also post No. 3 of Lot No. 89, hereinbefore described." There is another tie tying up this series of claims together, isn't it?

A. From the description; yes.

Q. Now, then, without running through this long description, have you read over these field-notes of this patent sufficiently well to state whether or not that whole group which are patented together are tied up to each other?

A. They are in the description given in the patent; yes, sir.

Q. Well, that is the only place you could tie them up, would be the description in the patent, isn't it?

A. The only place in the notes that you could; yes, sir. [1245—1095]

(Testimony of B. D. Stewart.)

Q. Well, then, I will ask you also if you know anything about the Royal lode claim which is just southeasterly of the Taku lode claim—do you know anything about that survey?

A. I know that such a survey is in existence.

Q. Did you ever take a look at that official survey of the Royal to find out whether or not the end line stake No. 3 of the Lotta is a common end line stake with the Royal?

A. I have examined the posts on the ground and found it was not marked for the Royal; I think the notes do call for the posts to be identical.

Q. And that corner which is identical with the other, what is it tied up to—another tunnel, isn't it?

A. Yes, sir; that is a tie on the Royal.

Q. Did you ever go up the side lines of these surveys in 1910 and find out how many corner posts were on the ground, of these certain mining claims I have called your attention to? A. I did; yes, sir.

Q. Now, let me ask you if you did not find—first, I will ask you to come to this Defendant's Exhibit "S,"—going up this end line of these claims composing this survey, can you tell me what corner posts, if any, you found along that common end line in 1910?

A. I found a post at the point indicated as corner No. 6 of the Lotta—at least, a post in the ground that was supposed to represent that; I wouldn't say that is the post indicated on this map.

Q. That is the corner post by which Judge Cushman decided the lower side line of the Lotta claim,

(Testimony of B. D. Stewart.)

isn't it? A. Yes, sir.

Q. Now, just tell me where you found any posts up there in 1910.

A. At this point marked No. 6 of the Lotta, near where corner 1 is indicated on the map; nothing at where corner No. 2 is indicated; nothing at the common corner of Survey No. 88 and [1246—1096] 89, on that northwest end line; I believe a post at the common corner for surveys 89 and 90; and a post in the vicinity of the place called for by corner No. 2 of Survey No. 90.

Q. Now, I will ask you, from this Defendant's exhibit which I have marked "K-2" for Identification, if that don't appear to be the same sort of a survey of these patented claims, that have been testified concerning, as are on Defendant's Exhibit "S"?

A. I wouldn't want to testify that it is the same kind of a survey, because there are some distances given on this map and there are no distances on this map. (Indicating.)

Q. Let's concede this is the same sort of a survey. Now, after you come up from corner No. 2 of the Lotta, I will ask you if you didn't find a post at the point indicated on Defendant's Exhibit "K-2" for Identification marked in red with the figure 1 in red?

A. Yes; I believe I did find a post there; it was marked for the—

Q. I am not asking you how it was marked—I am asking what corner posts you found.

A. Yes; there was a corner post there.

Q. There is a post marked in red on the upper end-

(Testimony of B. D. Stewart.)

line of this group of claims, with the figure 2 on one side and the figure 6 on the other—did you find that there?

A. That is one that I have already indicated.

Q. And come still further up—did you find on the same line, at the same angle, another corner post marked in red and the figure 2 in red just above it?

A. Now, you say at the same angle—I don't want to answer that it was the same angle—

Q. Same angle on this Defendant's Exhibit "K-2"?

A. At the same angle with what? [1247—1097]

Q. At the same angle, a continuation of the upper end line of the Taku lode, the Keystone lode and the Lotta lode?

A. Not on the same line; those corners are not on the same line.

Q. How many feet are they off?

A. A few feet; I don't remember exactly how much it is.

Q. Did you find anywhere in the neighborhood of this corner post No. 2 marked in red, any post?

A. Yes; I have already indicated in my other answer that was one of the posts I found.

Q. Did you ever go on to the adjoining claims, the Humboldt group, which adjoins this group on the west, to see whether there were any corners in there that tied in with any corners of this group of claims?

A. I was over there but didn't find any posts that tied in to these claims.

Q. Did you find any posts in there at all?

(Testimony of B. D. Stewart.)

A. I did find some posts; yes.

Q. Did you find any posts over there?

A. I did; yes, sir; several of them.

Q. Can you mention some of them—on what claims you found them?

A. Yes, sir; on the mill site lode I found some.

Q. That is the Webster mill site?

A. No; mill site, Survey No. 383; the Ropeway, Survey No. 545.

Q. Did you find any on the Webster mill site?

A. Yes; some on the Webster mill site.

Q. But, when you were making a location, as you claimed you made, of the Lotta, you used just the data that Mr. Hellenthal asked you about this morning, didn't you? You said that the distance from certain corners of the Lotta down to a call where a certain side-line would cross the creek should be so much, and therefore that there was a difference in the distance as indicated in the patent from what you [1248—1098] found on the ground, and you took and located the Lotta lode claim just with reference to where those lines might cross the creek, as called for in the patent?

A. I located them according to the way those lines crossed the creek.

Q. Well, now, Mr. Stewart, suppose you were sent up there by an investor, as a surveyor, to go up there to located a claim,—would you just go and take that claim, especially when it is included in the patent with a whole lot of other claims—would you just go up there and single out one of the lots of that survey

(Testimony of B. D. Stewart.)

and take some distances of certain corners to where those lines projected from those corners would cross the creek, according to field-notes, and then say you had finished your task and made an honest effort to locate this mining claim? Now, do you say the way you testified to Mr. Hellenthal this morning the way you located that Lotta claim, do you say it would be a fair, honest way for any surveyor to locate a claim, if he was honestly trying to place it on the ground? A. Yes; I would, Judge.

Q. You would say it was? A. Yes.

Q. You would not, as an honest surveyor take into consideration any of the corner posts that you say were on the ground in 1910?

A. I would not take them into consideration as I found all of them on the ground—I would judge of them as to their character by their appearance.

Q. That is, if they did not technically comply in your mind with what a survey stake ought to be,—seemed a little new or something odd about them, you would not take those posts into consideration at all, would you? [1249—1099]

A. I would not take them into consideration if I did not think there was sufficient evidence to show that they were the original posts in their original position; I would certainly go by the calls in the notes and interpret them the best I could.

Q. You wouldn't go up the common end line of the Keystone and the Crown Point to see if there were any common lines or where it ties into the Lotta claim, would you?

(Testimony of B. D. Stewart.)

A. I did do that, Judge, and found that the ties—

Q. Did you tell Mr. Hellenthal that you did do that? A. He didn't ask me.

Q. Didn't you tell Mr. Hellenthal this morning in answer to his question—he gave you just the field-notes of the Lotta claim and segregated them from the other field-notes in this patent, and didn't you give your answer directed upon that, and that alone?

A. That is the way he asked me the question.

Q. And then when I brought it to you again and asked you to point out in this patent just what was your criterion to go by, didn't you point out the description on page 1772?

A. Yes, sir; because that was in answer to his question, which included only that one description.

Q. What time did you say you made this attempt to locate the Lotta claim?

A. You mean the first time?

Q. Yes, sir. A. In November, 1910.

Q. You testified to these identical same matters in the trial before Judge Cushman, of the Basin case, didn't you? A. I believe so.

Q. And you had a map there in that case where you slid the Lotta up and down the creek and you gave it a different [1250—1100] location, didn't you?

A. No, I didn't, Judge; I gave it but one location there.

Q. You know Judge Cushman found against you on the proposed location, don't you?

(Not answered because of objection.)

(Testimony of B. D. Stewart.)

Q. Now, that survey was made for the purpose of the trial of that case before Judge Cushman, wasn't it?

A. As I understand it, it was made to exhibit the defendant's claims in that vicinity.

Q. It was made for that purpose alone, wasn't it—didn't you make it only for the purposes of that trial? A. That is all.

Q. Now, then, Mr. Stewart, you said when you were up there in 1910 you found some brush cleared out on the lower side line of the Lotta claim?

A. I don't believe I have testified to that yet.

Q. Didn't you testify to Mr. Hellenthal and say that the dam was in a certain relation to the cut outline?

A. I don't think he asked me about a cut outline; I think he asked me about a line from the two posts.

Q. I think you testified this morning that when you were up there in 1910 you observed the brushed out line on the lower side line of the Lotta?

A. I don't recall that I testified to that, but I did observe such a line more or less brushed out.

Q. And you can see that line up there now, can't you?

A. Yes; it is quite distinct because it has been brushed out since.

Q. Since 1910?

A. Yes, it has been brushed out recently—cleared out.

Q. How long ago?

A. I don't know. [1251—1101]

(Testimony of B. D. Stewart.)

Q. About how long ago? A. I don't know.

Q. When did you see it last?

A. The last time I was up there was on the 2d of August, and I was there on the 1st.

Q. You think some of it has been cleared out this year? A. Yes, sir.

Q. Now, then, prior to any clearing that has been done this year, you could see that lower side line of the Lotta across the creek distinctly, couldn't you? A. Yes, I have seen it before.

Q. Now, how do you say you made your survey to ascertain as to whether or not any of the Alaska-Juneau's dam was originally constructed—when did you make that survey?

A. I made that in 1910—November, 1910.

Q. And what part of the dam did you say you found on the Lotta claim?

A. It was an embankment of earth on the northwest end.

Q. Did you make that survey before Judge Cushman tried the case? A. I did; yes, sir.

Q. And you testified, I think, in Judge Cushman's court, didn't you? A. I did, yes, sir.

Q. Do you say now that the way the dam is now constructed, that there has never been any change made in it?

A. I don't say that; no, sir; I have just testified that as far as I can observe that the northwest end of the dam has been swung down the creek several feet.

Q. The northwest end—you mean the end on the

(Testimony of B. D. Stewart.)

left-hand side of the creek as you go up?

A. Yes, sir. [1252—1102]

Q. Did you ever measure to see how far that was swung down the creek?

A. No, because the point I measured from originally is gone.

Q. So you couldn't say how many feet it was swung down the creek?

A. No, not exactly; I have never measured it.

Q. Do you testify that the intake of the flume is the same now as it was before that case was tried before Judge Cushman? A. Yes, sir.

Q. Now, if they swung the end of the dam that is on the left-hand bank of the creek as you go up the creek, did the remaining part of the dam remain the same, or would it be swung accordingly?

A. As far as my observations have extended, I would say that there was one-third to one-half of it that was the same; that is, from the intake to somewhere near the center of the creek; then there has been a bend made in the dam and it has been swung down to the northwest end of the creek.

Q. Did you ever go up there before that case was tried before Judge Cushman, to ascertain what part of the dam was on the Lotta claim? A. I did.

Q. There was some part of it on the Lotta claim, wasn't there?

A. There was, as I have testified, just this embankment.

Q. Now, Mr. Stewart, supposing we take these two pencils and lay them parallel to each other, and

(Testimony of B. D. Stewart.)

say between these two pencils it represents the bed of the creek, and one pencil represents the right-hand bank as you go up the creek and the other the left-hand; I will ask you if originally the dam wasn't constructed somewhat diagonally across the creek from one of these banks to the other? [1253—

1103] A. Yes, sir.

Q. Now, then, in what way was it changed—the part of the dam which is on the left-hand side represented by the red pencil, they swung that down the creek?

A. Yes, on the left-hand side going up the creek.

Q. And you don't know whether that left the right-hand side of the dam, on the right-hand side of the creek, remaining the same, or whether they moved that too?

A. I don't know whether they moved any of it; I know from my survey the dam is still off the line.

Q. Don't you know that they swung that part of the dam which is on the left-hand side of the creek down the creek and that threw the part of the dam on the right-hand side of the creek over the line of the Lotta? A. No, I don't know that.

Q. Don't you know that that dam don't extend clear across the creek?

A. It is in the shape of a V, with the apex up the stream, and the apex is somewhere near the center of the stream.

Q. The dam is in the shape of a what?

A. V, and the apex is up the stream.

Q. Is that the way you build a dam to sheer some

(Testimony of B. D. Stewart.)

of the water out of the flume?

A. That is the way this is built.

Q. It will sheer some of the water off of the flume?

A. Established a spillway to take off the water.

Q. This is on the left-hand side of the creek as you go up? A. It is the northwest—

Q. The spillway is near the left-hand bank of the creek as you go up—on that side of the creek?

A. Yes, sir.

Q. And your intake is over near the right-hand side of the creek? [1254—1104]

A. That is correct.

Q. And the flume itself does not come up flush with the dam, does it?

A. The intake of the flume does, yes.

Q. About how wide is that intake there?

A. I never measured the intake. Just from my recollection, it is six or seven feet wide; something like that—eight, maybe.

Q. Are there any cross timbers in that dam?

A. Not that I know of.

Q. Were there any there when you were there the first time?

A. The dam was there when I was there the first time.

Q. You were not present when it was built?

A. No, it was built when I was there.

Q. What I mean by timbers is timbers that go across the creek, and constitute your dam, and would be tied in between those logs, and extend back up the creek so as to hold the dam in place?

(Testimony of B. D. Stewart.)

A. I don't know how the dam is built; I wasn't there when it was being built.

Q. You wouldn't say that is not the way it is built?

A. I wouldn't say; no, sir; I don't know how it is built.

Q. Now, you would not swear that there are not some of the timbers that constitute a part of that dam still on the Lotta claim, would you?

A. As far as I was able to see, they are not; that is all that I can testify to, is what I can see.

Q. Of course, if there were any cross-timbers in there extending back up the creek, up 15 or 20 feet, or something like that, these cross-timbers might be on the Lotta claim?

A. They might be if they were there.

Q. Did you make an actual survey to ascertain whether or not there was any part of the dam on the Lotta claim, excepting the cross timbers?
[1255—1105]

A. I did; I sighted up from post No. 5 as on the ground to No. 6 as in view, and went down that line between the two to observe what I could see there, and as far as I could see the dam was off of that line.

Q. That is the means you took to ascertain it?

A. It was; yes, sir.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Stewart, you actually ran out that line,

(Testimony of B. D. Stewart.)

did you not? A. I did; yes, sir.

Q. And from the information that you obtained by running that line, are you able to testify as to whether or not any part of the dam is across the line of the Lotta?

A. I couldn't testify that there was any of it on the Lotta at all; from my observations the dam was off the Lotta, the structure of the dam.

Q. The entire dam?

A. As far as I could determine.

Q. If there had been a part of the dam sticking over on the Lotta you would have seen it?

A. If there was any of it visible I could have seen it.

Q. Was there any visible part of the dam over on the Lotta side?

A. Not at the time I made my survey.

Q. When was that?

A. That was *one* the 1st of August of this year.

Q. Did you examine the field-notes in Judge Cushman's decree—the field-notes of the Lotta?

A. Yes, sir. [1256—1106]

Q. Are those the same as the field-notes given in the patent? A. They are different.

Q. The claim described by Judge Cushman in his decree is not the claim described in the patent?

A. It is not the same description.

Q. Judge Winn has been interrogating you in regard to an exhibit called Defendant's Exhibit "S"; do you know whether that exhibit plats the claim as described in Judge Cushman's decree or as described in the patent?

(Testimony of B. D. Stewart.)

A. Well, I couldn't say without a little closer examination of the map; there are no courses or distances on it.

Q. There are no courses or distances on it?

A. There are no courses or distances given on it, but I could tell by scaling it.

Q. Judge Winn has asked you to go from post to post and stake to stake, and has asked you if that wasn't the patent description—what have you to say about that, Mr. Stewart, whether that map follows the patent description?

A. I cannot tell whether it follows the patent description or not; as I say there are no courses or distances on it.

Q. You haven't scaled it? A. No.

Q. You don't mean to testify that that map is in accordance with the patent description?

A. Not at all.

Q. Or in accordance with any other description?

A. No, sir.

Q. You testified, I think, in response to Judge Winn's question that you had surveyed and tied in all those stakes as found on the ground and referred to as stakes of the Crown Point, Taku Gold and Silver, and all those various claims [1257—1107] above the Lotta. A. I have.

Q. Also of the various tunnels and other things referred to? A. I have; yes.

Q. Did those stakes or anyone of them, as you found them upon the ground occupy the positions called for by the patent description?

(Testimony of B. D. Stewart.)

A. Not one of them occupied such position.

Q. Did any one of those stakes occupy the relative position to any of the other stakes called for in the patent? A. They did not; no.

Q. If you were to assume that any one of those stakes was one of the stakes called for in the patent, would any one of the other stakes be found to occupy the correct position? A. No, sir.

Q. Now, speaking with reference to the tunnel, ties, and the tie to the mill, did any one or all of those ties occupy the position with reference to the stakes found on the ground that they should occupy if placed there in accordance with the patent description? A. No, sir.

Q. Did you use any or all or either of them?

A. None.

Q. A tie to a mill or tunnel where there is any other tie except a mill or a tunnel given, is about as definite as a tie to the top of a mountain, isn't it, Mr. Stewart? A. I consider it so; yes, sir.

Q. Judge Winn has asked you why you, in locating the Lotta claim upon the ground, observed the ties to Gold Creek and located the claims with reference to those ties—I wish you would explain that to the Court?

A. I located it that way from those ties because, considering [1258—1108] we are trying to locate the Lotta claim, that creek traverses the side and end lines of the Lotta claim; the notes tell how far from the various corners those creek intersections are upon the ground; I found that the stream in this

(Testimony of B. D. Stewart.)

case has a rock channel, and apparently is not subject to any change, and is therefore definite and indestructible. The tie to a mill is an indefinite thing; there is no particular point on the mill to tie to in this case, and it doesn't say whether it is one corner or another, or what part of the mill it is tied to; furthermore, a mill is a destructible thing, and a thing that will change in passing years. The same thing with regard to a tunnel; my experience with tunnels has been that in many cases they are extremely unreliable as ties, due to the operations which are carried on, and in some cases due to slides; also tunnels are subject to caving in at the portal or at the face, and in case of caving at the face the length of the tunnel would be altered, and it would not fit the description, and in case of any other work done on the tunnel it would not fit the description; and in a steep country like this, where the mountain sides are subject to slides, a tunnel is a very unreliable tie. I know of cases where tunnels are called for in patents where the tunnels have been obliterated by the movements of the ground; and a tunnel then might be driven in that immediate vicinity, and might be mistaken for the tunnel that they were originally tied to,—I have known of that to happen.

Q. In any event, neither of these stakes is in the right position, if tied to a mill or tunnel or any other object, as you observed them?

A. They do not check. [1259—1109]

Q. Now, what is the reliability of a stake found in the ground as compared to a tie to a natural object, such as the creek?

(Testimony of B. D. Stewart.)

(Not answered because of objection.)

Q. Now, Mr. Stewart, I think that you said you found those stakes concerning which Judge Winn has been asking you along the end line of the various claims as they laid upon the ground?

A. Yes; I found posts practically in the position he indicated, as near as I could pick out from the map.

Q. Is the course given along there so you could find those stakes—they are all put in a straight line, aren't they? A. Fairly straight line.

Q. Does that straight line follow the same course as the end lines of these claims follow as given in the patent? A. No, sir.

Q. If those are the correct stakes, then the patent is wrong?

A. Decidedly, by two degrees, or something like that.

Q. Do they fit or tie to any mineral monument?

A. They do not, not by a considerable.

Q. Is there anything you know of that they do fit?

A. No.

Mr. HELLENTHAL.—That is all.

Recross-examination.

(By Judge WINN.)

Q. It is all wrong, is it, Mr. Stewart?

A. According to those posts in the ground, it is all wrong.

Q. And you went up there for the purpose of showing that it is all wrong?

A. I found what the posts showed; yes. [1260—1110]

(Testimony of B. D. Stewart.)

Q. You went up there under these instructions that it was material to show that everything was wrong, didn't you? A. By no means.

Q. Now, I will ask you—you say they are off two degrees; now, of you take Garside's courses, or the angles that he runs those lines on and then take his variations, you would approximately run those lines just in the same place they are of you take your variations and take the angles which you run them, wouldn't you—did you ever test that?

A. I don't know that I did; you mean the angles as they are indicated on the ground, of the posts, how they would compare with the angles as shown in the description.

Q. Mean this, you know what variation those lines are run on in the patent?

A. I know what the variation of the patent calls for.

Q. That is what I mean?

A. Yes, sir; I know what it is.

Q. Then, taking Garside's variations and Garside's angles as he turned them in for the Lotta lode claim, I want to know if you would not meet with the same results as if you took your variations and your angles which you ran around that claim?

A. Now, you speak of angles; I don't know what you mean by angles; do you mean the bearing with reference to the true meridian?

Q. Yes, sir; I mean turning the angles at the corner posts the way Garside did?

A. Oh, no, sir; you would have to turn your angle

(Testimony of B. D. Stewart.)

from some definite corner.

Q. Where did Garside commence to make his survey?

A. I think, according to Judge Cushman's decision, it was from a point 150 feet from corner No. 6, northwesterly.

Q. Do you remember what course he then ran from No. 6? [1261—1111]

A. I believe it is north 56—15.

Q. What variation? A. Thirty degrees.

Q. That isn't the true variation, is it?

A. No, I don't suppose it is.

Q. What variation do you run that course at?

A. At the present time about 32°, a little more than that.

Q. What course did you take from the initial point there to run up to the next corner—what would be your course?

A. Running, you mean, according to the present—

Q. Running according to the present outside boundary line of the Lotta claim?

A. If I understand you, Judge, I am to start at the magnetic meridian, and run off on a course that is called for in the patent?

Q. Yes, take the variation, at what it actually is, not what Garside had the variation at, and run between the corner post at which Judge Cushman's decision commences at, and run along that line in the direction that Judge Cushman established—what would be your course between those two points?

A. Well, if I used the magnetic meridian at this

(Testimony of B. D. Stewart.)

time and followed it out, it would run on a true course N. 57—24 N. E., and it would show a variation or declination of 32°.

Q. That would be the course on a variation of 32° that it would run; Garside's variation was what?

A. Thirty degrees.

Q. How would his course run? A. 56—15.

Q. Now, you talk about the general unreliability of a mill and a tunnel as a tie for courses. Now, Mr. Stewart, suppose you are making a survey of a mineral claim and in the course of making your survey you tie up to the portal of some tunnel [1262—1112] then if you come back in five or ten years and find that the portal of that tunnel has not changed any, then it would be a pretty good reliable tie, wouldn't it? A. Yes, it would.

Q. And you say buildings are apt to fall down or blow over—if the Ebner mill was up there at the time this survey was made, and has remained in the same place, and the call was established from the course they were running on, that would be somewhat of a reliable call, would it not?

A. It would, with reference to that, yes.

Q. Now, did you ever measure the distance, Mr. Stewart, along down the upper side line of the Crown Point, the Keystone, the Taku and the Lotta, to find out whether the distances between the posts that were set there is the same, or is it materially changed on the ground from what it is in the patent—It is pretty near the same isn't it?

(Testimony of B. D. Stewart.)

A. Between those posts that do exist on the ground, yes.

Q. Now, you say that you found all these things wrong from the field-notes in the patent; how far off, according to your idea, are any of those corner posts wrong—you told me two or three feet, some of them, didn't you?

A. I don't think I specified that.

Q. Twenty feet?

A. No, I didn't specify any feet.

Q. Well, how many feet is it off?

A. I wouldn't say from memory; I would rather examine my notes.

Q. Not very far, is it?

A. Not very far off; I think I testified that they were substantially on the line—on a line with one another; that is, those posts that are in there now.

Q. You mean to say those that were in there in 1910? A. Yes, sir.

(WITNESS EXCUSED.) [1263—1113]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal R. G. WAYLAND, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of R. G. Wayland, for Plaintiff
(Recalled in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is R. G. Wayland? A. Yes, sir.

(Testimony of R. G. Wayland.)

Q. You have already been sworn? A. Yes, sir.

Q. Were you in the employ of the Alaska-Juneau Company in the year of 1910? A. Yes.

Q. At the time this water location was posted?

A. Yes.

Q. Do you know the map in the office of the Alaska-Juneau Gold Mining Company on which is shown these various claims, the Lotta and the surrounding claims? A. Yes.

Q. Are you familiar with that map? A. Yes.

Q. How is that map made up, referring to the map from which you and Mr. Kinzie located the point at which to locate the Mulligan notice—how are the claims placed upon that map?

A. They are compiled from the records in the Surveyor General's office.

Q. How is the Lotta claim platted on that map?

A. From the official notes.

Q. On that map was the mill building situated on the Lotta claim shown? [1264—1114]

A. It was.

Q. And how was the creek shown on that map?

A. As shown on the official plat.

Q. Do you know the position of the Lotta lower side line on the ground, as surveyed upon the ground with relation to the Colorado and Idaho placer as shown upon that map and in accordance with the official notes of these various surveys as shown in the Surveyor General's office?

(Question not answered because of objection and demand made for production of map.)

(Testimony of R. G. Wayland.)

Q. I wish, Mr. Wayland, when you go home to-night you would look the map over and see if there is anything on the map which contains private information that you do not want to make public, and if not will you bring the map over in the morning? I call your attention to a map received in evidence as Plaintiff's Exhibit No. 1, and call your attention especially to the buildings shown thereon and marked here as the "New Ebner Mill and Excavation for Enlargement"—are you familiar with that building?

A. I am.

Q. Are you also familiar with the excavation?

A. Yes, sir.

Q. Mr. Wayland, did you see an excavation there?

A. Yes.

Q. Is there an excavation there? A. There is.

Q. Did you measure that excavation? A. I did.

Q. How large is it?

A. It is about 45 x 65 feet.

Q. 45 x 65? A. Yes. [1265—1115]

Q. Now, Mr. Wayland, are you familiar with the Alaska-Juneau dam as it is now on the ground?

A. I am.

Q. I am speaking of the dam near Snow Slide gulch that is in controversy in this case?

A. Yes, sir.

Q. Do you know where the lower side line of the Lotta is, as it is marked by stakes at corners Nos. 5 and 6? A. I do.

Q. Where is that dam at present, as it is now on the ground, with reference to the line marked by those

(Testimony of R. G. Wayland.)

two posts, 5 and 6? A. Below the line.

Q. The entire dam? A. The entire dam.

Q. Is there any part of it projecting over across the line? A. No, sir.

Q. Do you know where that dam was when it was first constructed in October, 1910? A. I do.

Q. Where was it at the time with reference to where it now is? First, I will ask you where was it with reference to the lower side line of the Lotta as marked upon the ground by these stakes 5 and 6?

(Question objected to and asked again.)

Q. Now, Mr. Wayland, will you please tell the Court what part of the dam as first constructed was on the Lotta claim, as the claim is presumed to be defined by the stakes that occur at corner No. 5 and corner No. 6 on the ground?

A. That portion at the end of the timbers, the part of the dam to the northwest, over on the left-hand bank of the creek [1266—1116] going up stream, that portion consisting of brush and rock and earth.

Q. No part of the timbers were on the Lotta—was any part of the timber structure of the dam on the Lotta? A. I believe not.

Q. Since then what change has been made in the dam structure?

A. The part of the dam that was composed of brush and earth and rock was removed, and another wing built from a point at the end of the old timber dam across the creek below the side line of the Lotta and diverging from it. This new part was built below the side line of the Lotta.

(Testimony of R. G. Wayland.)

Q. And that is the position the dam now occupies?

A. It is.

Q. The intake, was that ever changed? A. No.

Q. Mr. Wayland, these lines, the southerly side line of the Lotta in its relative position with reference to the dam at the various points that you have testified, were they determined by you by actual surveys upon the ground, or otherwise?

A. By actual surveys upon the ground.

Q. By actual surveys upon the ground made by yourself? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. When did you first make any survey of the ground to ascertain what you have been testifying concerning?

A. I don't remember when I first did.

Mr. HELLENTHAL.—Just a moment,—let me ask Mr. Wayland another question.

Q. Did you ever do any surveying, Mr. Wayland, to determine the [1267—1117] position of the lower side line of the Lotta on the ground?

A. I did.

Q. Did you find any tunnels on the Taku Gold and Silver at that time?

A. I found some tunnels; yes, sir.

Q. How many tunnels?

A. I found three or four.

Q. Were any of those tunnels in such a position on the ground that they would answer the call of the

(Testimony of R. G. Wayland.)

patent for a tunnel, having in mind that one of the stakes that it tied to was in the correct position on the ground?

(Objection.)

Q. You found stake No. 3 marked for corner No. 3 on the ground? A. Yes, sir.

Q. And also the stake of the Taku Gold and Silver which is supposed to tie to one of those tunnels as described in the patent?

A. I didn't find that stake, no; I was tying it to the line of the Taku Gold and Silver to some of the corners that are reported to be the corners of the Lotta.

Q. Did any of the corners of the Lotta to which you tied the tunnels from the corners given to the patent occupy such a position on the ground that you could adopt any one of those tunnels as the tunnels referred to in the patent?

A. No, sir; it did not.

Mr. HELLENTHAL.—That is all.

Cross-examination (Cont'd).

(By Judge WINN.)

Q. When did you make that survey? [1268—1118]

A. The 12th of October, 1910.

Q. October 12th, 1910? A. Yes, sir.

Q. What was your purpose in making that survey?

A. To see if it was so that the lower side line of the Lotta could be where they claimed, to see where it would be if that tie was followed out.

Q. That is when you were making a survey to as-

(Testimony of R. G. Wayland.)

certain whether or not your dam which you had built was on the Lotta claim?

A. To see whether that lower side line of the Lotta as claimed by the Ebner Company would fit in with that tie.

Q. You didn't make that survey until the 12th of October, 1910?

A. I didn't make that tie until the 12th of October, 1910.

Q. Was that after you had built your dam?

A. That was after the dam was built.

Q. What ties did you find there?

A. I couldn't find any tunnel that would answer the description in any way—no tunnel that I could have adopted to tie in.

Q. Referring to Defendant's Exhibit "S," the tunnel that you were trying to find is the tunnel that is marked "Tunnel" on the Keystone Lode Claim on this exhibit—did you find a tunnel up there?

A. Found a tunnel in there somewhere; yes, sir.

Q. When you ran down the lower side line of the Keystone Lode Claim, you knew that in the patent field-notes there was a call made to a tunnel, didn't you? A. Yes.

Q. Do you know what course that tunnel bears from the side line of the Keystone, from where the call was made to it?

A. I don't remember, no.

Q. You don't remember that at all?

A. No; I do not. [1269—1119]

Q. Do you know what the distance is in the patent

(Testimony of R. G. Wayland.)

from the call on the lower side line of the Keystone to the tunnel? A. I don't remember now; no.

Q. Do you remember what the length of the tunnel is as given in the field-notes?

A. I don't remember now; no.

Q. You remember what description is given in the field-notes of the tunnel to which this call is made?

A. The description in the field-notes has escaped me now—I don't remember.

Q. You don't know how far you found it to be off?

A. I know I didn't find anything that would answer the description at all.

Q. Answer what description?

A. In the field-notes.

Q. Well, I will give you the field-notes and let you see how it differs. Here is the patent (handing paper to witness)—I wish you would take that and tell what you found when you were up there, Mr. Wayland?

A. I didn't find either the bearings or the distances to the tunnel.

Q. What difference did you find, Mr. Wayland?

A. I don't remember, but it wasn't very close.

Q. What do you mean by not very close?

A. It was 40 or 50 feet out as near as I can remember; I don't like to give the figures.

Q. You didn't bring your figures with you, did you? A. No, sir.

Q. You made that survey after your dam was all in? A. Yes, sir.

Q. Now, then, that dam was originally built diag-

(Testimony of R. G. Wayland.)

onally across the [1270—1120] creek, wasn't it?

A. It was.

Q. And you know all that part of the dam from the intake over to the left-hand bank of the creek going up the creek you found to be on the Lotta claim, didn't you?

A. I said I found none of it on the Lotta claim from the intake to the end of the timber dam—I didn't say I found any of it on the Lotta claim.

Q. The intake is on the right-hand side of the creek as you go up, isn't it? A. Yes, sir.

Q. There isn't any timber between your intake and the right-hand bank of the creek, is there?

A. No.

Q. That is cut through there in rock, isn't it?

A. Yes, sir.

Q. The timber part of the dam, then, extends across from the intake to the left-hand bank of the creek as you go up?

A. At that time it extended from the intake to two large logs in the center of the creek, where it entered; and that part of the dam was not on the Lotta; the remaining part of the dam, which consisted of brush and rock and earth, was partly on the Lotta and partly off the Lotta.

Q. That was a part of your dam, wasn't it?

A. That was a part of it; yes, sir.

Q. How long was that part of your dam from the big log over to the side of the creek?

A. Probably 15 feet long.

Q. You used that as a part of the dam—that

(Testimony of R. G. Wayland.)

sheered the water off down to your intake?

A. The embankment to form an approach to the dam. [1271—1121]

Q. How many feet above the lower side line of the Lotta was the dam, that was on the Lotta,—that is, I mean taking the longest part—taking from the side line over on the left-hand side of the creek and going up the creek, how far would that be on the Lotta claim?

A. The way I remember, from three to six feet.

Q. You don't remember that? A. Yes.

Q. Did you make any actual measurements of it, Mr. Wayland?

A. I measured the timber part and sketched in the embankment.

Q. You haven't that sketch with the figures with you, have you? A. No.

Q. Now, after Judge Cushman's decision, what did you say you did with that part of it?

A. There was a long dam put in the creek from the point where the timbers ended in the old dam to the left-hand bank going up the creek.

Q. Then, you have to make kind of a turn there—you would turn an angle in the creek?

A. Yes, sir.

Q. Is that angle turned in the middle of the creek?

A. Yes.

Q. Is that the way your dam is constructed now?

A. Yes, sir.

Q. Part of that dam would lead your water away from the intake and a part of it leads it in, doesn't it?

(Testimony of R. G. Wayland.)

A. When the water gets high enough, the water will go right over part of that dam; but if there is no surplus water, all of the water goes into the intake.

Q. I thought you said that apex was in the middle of the creek?

A. It is in the middle of the creek, but the elevation is such that the water cannot flow over it until it reaches the [1272—1122] highest elevation of the intake of the flume.

Q. Now, don't you know, as a matter of fact, that the change you made up there, Mr. Wayland, was that that dam originally was built diagonally across the creek—we will represent the banks of the creek with these two pencils in this manner (indicating), and that after the decision of Judge Cushman you took and pushed it down this way (indicating) on the left-hand bank going up, and that shoved the part of the dam that was on the right-hand bank going up, up the creek some?

A. No, that is not so.

Q. Now, don't you know that is true, and that portion of the dam now that you shoved up the creek on the right-hand bank going up is still on the Lotta claim?

A. I believe not—I am pretty sure it is not.

Q. You are not emphatically sure of it, are you, Mr. Wayland?

A. Yes; in a way, yes, I am sure of it.

Q. Did you ever measure it to see if it was on the Lotta claim? A. Yes.

(Testimony of R. G. Wayland.)

Q. How did you measure it?

A. By setting up an instrument in the bottom of the creek on the line and taking a shot at the apex of the dam, it threw it below the lower side line of the Lotta.

Q. Were you down in the bed of the creek?

A. Yes, sir.

Q. When did you do that? A. July 29th.

Q. Of this year? A. This year.

Q. When you are down there in the bed of the creek there at that point, what can you do with an instrument to determine [1273—1123] whether or not you are above or below the line?

A. Why, simply run a line down there and sight up over the line defined by corners 5 and 6; I sighted up on corner No. 5 and sighted on corner No. 6, and surveyed on down to the bottom of the creek, and set up an instrument, and it was about 30 feet from the apex; I sighted from the apex or angle and found that the apex was below the side line of the Lotta.

Q. Don't you know that the creek is so precipitous that you cannot get down in the bed with an instrument? A. I know it is not.

Q. Where your dam is built? A. Yes, sir.

Q. The banks are almost straight up and down, aren't they? A. No, they are not so bad.

Q. Have you got any cross timbers in that dam?

A. No; not that I know of.

Q. Did you help build the dam? A. I did not.

Q. It is banked up on the upper end—the sand has gathered behind it?

(Testimony of R. G. Wayland.)

A. The old part or the new part of the dam?

Q. I mean the dam.

A. It is not banked up behind the old part.

Q. What do you mean by the old part?

A. The part that remains as it was built at first.

Q. Is it banked up behind the new part?

A. It is banked up behind the new part; yes, sir.

Q. Do you know whether or not there are any cross timbers to hold that dam in place?

A. I am sure there are not any in evidence.

Q. How do you brace your dam?

A. It is braced in the rock, wedged in. [1274—

1124]

Q. No cross timbers in the dam at all?

A. There are none apparent.

Q. Will you be positive about that?

A. If there are any, they are pretty well hidden.

Q. Have you been around the dam and looked in to see if there were any cross timbers?

A. I have been around the bank and looked in.

Q. When did you do that? A. The same day.

Q. Last July? A. Yes; about a week ago.

Q. Now, I will ask you if on the left-hand bank going up the creek, in that dam there is not at least one log that is not between the rocks that constitutes the dam, and if that cross log doesn't extent across the creek?

A. I don't know that there is; I didn't see it if there is any.

Q. You wouldn't swear positively that there is not one, would you, Mr. Wayland?

(Testimony of R. G. Wayland.)

A. I didn't burrow down to see, but I don't think there is.

Q. Did you have the patent field-notes with you when you undertook to run that line across on the lower side of the Keystone Lode claim in order to ascertain about that tie to the tunnel that I questioned you about a while ago?

A. I had an abstract from that.

Q. Did you make any effort to find the tie to the mill at that time? A. We tied to the mill.

Q. That tied in pretty close, didn't it?

A. If you choose your point on the mill, you could tie it in pretty close, but there is nothing on the mill to tie to.

Q. How far is that mill from the point on the course from which [1275—1125] the tie is made?

A. I don't remember.

Q. How many feet do you think?

A. Apparently 150 feet, from the map.

Q. You never measured it?

A. I didn't go down into the corner.

Q. You know that that bunch of claims which is included in the patent are all included in one patent and surved in one survey, don't you?

A. They are all in one patent, but they are in seven surveys.

Q. I know, Mr. Wayland, but let us get at it now—don't you know that you commenced at corner No. 1 in that patent, being the upper end line of the Lotta Lode claim; don't you know that you take the patent field-notes and you run clear around up the end line

(Testimony of R. G. Wayland.)

of the Taku and the Keystone Lodes and the Crown Point Lode, and you run the same course all the way up, don't you, in the field-notes?

A. In the field-notes; yes, sir.

Q. Now, when you were trying to make this location, did you attempt to run up these end lines that I have just mentioned and undertake to find all the corner stakes and the ties that were made, in order to locate this Lotta claim? A. No.

Q. That would seem to be the natural way to do it if you were trying to make a survey to get an absolute location of it, wouldn't it? A. I was trying—

Q. I don't care what you were trying to do—you are a surveyor—if you were going up to make an examination to determine where a certain lode claim was located, you being unbiased in the matter, you would go and look for all of the corner [1276—1126] posts that you could find, wouldn't you?

A. Yes, sir.

Q. And in this case, where they were surveyed in a bunch and they run up a common end line like I have indicated to you, and they have a different side line, different end line and make different ties, if you found three or four stakes on the Lotta claim which were marked "Survey 87," which is the survey of the lode claim, and a tie to the mill, you would use all those matters in ascertaining the true location of the lode claim, wouldn't you?

A. I would take into consideration everything that I could find; yes.

Judge WINN.—That is all.

(Testimony of R. G. Wayland.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. If, however, Mr. Wayland, you were a surveyor entirely independent and unbiased, and you went upon the ground and found a lot of stakes and found that those stakes did not tie to the permanent monuments and natural objects referred to in the patent, would you regard the stake as having any value as to where the claims were located?

A. In case the stakes and the natural monuments and ties did not agree, I would give the control to the natural monuments, providing that the stakes did not agree with them.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(WITNESS EXCUSED.)

(Court adjourned until 10 o'clock to-morrow morning.) [1277—1127]

MORNING SESSION.

August 8, 1915, 10 A. M.

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal, JOHN B. MARSHALL, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John B. Marshall, for Plaintiff
(Recalled in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You are the Recorder for the Juneau Recording District, and United States Commissioner?

A. Yes, sir.

Q. And as such you are the keeper of the records of the territory embraced within the Harris Mining District? A. Yes, sir.

Q. Have you in your custody as recorder all the water notices recorded for water locations made within the territory embraced within the Harris Mining District?

A. I have eleven books of what are known as Placer and Water Locations, and these are the records that I received when I entered upon the office, and so far as I know embrace all of the water locations that have ever been made in this territory embraced within the Harris Mining District.

Q. Mr. Marshall, you are familiar with the Harris Mining District—that is, commencing at Auk Village and running down the boundary line to the Taku River, and then down the inlet to Stephens Passage and back to the Auk Village?

A. Yes, sir.

Q. Now, have you made an examination, Mr. Marshall, of all the records of your office containing notices of water locations [1278—1128] for water rights located within the Harris Mining District?

(Testimony of John B. Marshall.)

A. I have.

Q. Have you an examination of each and all of such water notices to determine the date of location and date of record of each and all such notices?

A. I have.

Q. Have you made a further examination of those water notices to determine which of said notices designate the place of intended use? A. Yes, sir.

Q. Have you a record on which is shown the date of each location made within the Harris Mining District, the date on which the location notice was recorded, and also the fact of whether or not the place of use was designated in the notice?

A. I have made such a record; I will say that I didn't make the record in the first instance, the record was made and handed to me for checking, but I checked it and revised it to some extent.

Q. And the record as you now have it contains accurate data upon that subject? A. Yes, sir.

Q. And shows the date of location of each water notice within the Harris Mining District, the date of the recording of each water notice, as well as indicating as to whether each notice shows the place of intended use? A. Yes, sir.

Q. This, Mr. Marshall, in the memoranda or record which you have made. (Handing paper to witness.) A. Yes, yes.

Q. And it contains all the matters and things to which I referred? A. Yes, sir. [1279—1129]

Q. And it is correct and accurate? A. Yes, sir.

(Testimony of John B. Marshall.)

Mr. HELLENTHAL.—I now offer this memoranda in evidence.

The COURT.—Mr. Marshall, do I understand you to say that you have been over every record-book which is in your office to ascertain this information?

A. The eleven books of placer and water locations I have turned page by page and examined every location notice; I can see that it is possible I might have skipped a very small number of notices, but I hardly think that I have skipped any as I have turned them page by page and gone over them very carefully.

The COURT.—This document, what do you say as to whether or not it contains a résumé of each water location notice that has been made in what is called the Harris Mining District from June 27, 1881 to this date, July, 1914?

A. It does contain such a résumé.

The COURT.—And contains a statement of the name of the locator, the date of location, the date of recording, and where recorded? A. Yes, sir.

The COURT.—How many of those books were there, you say? A. There are eleven books.

The COURT.—How large are those books, Mr. Marshall?

A. The last one is the moderate sized book we are now using; they run from that to three that are about half that size, and run down to very small record-books like the other records.

The COURT.—The paper was prepared by you and your assistants?

(Testimony of John B. Marshall.)

A. The paper was not prepared by me in the first instance; Mr. Hellenthal brought it to me, and I took and checked it over; [1280—1130] I found some additional notices; I found in a few instances that the designation that they had didn't agree with what I found, and I changed to some extent the designation they had there; that is, in one of two cases I think they had the period between the date of location and the date of recording different from what I found it, and in one or two cases the place of use, in my opinion, was not designated, and in some cases it was designated when they had it wasn't, but I didn't very much alter the record as they had it.

The COURT.—Did you find any instances when they stated the place of use was not designated where they said it was designated?

A. My recollection is that they did; I haven't kept a separate memoranda of that, but I looked over the figures both ways; I found some places where they said the place of use was designated where I couldn't see that it was, and I found some places where they said it was not where I found that it was.

The COURT.—Well, was there any of those instances where there could be any doubt about where the place of use was?

A. I think that is true; I think that the only thing about this compilation that might be subject to criticism is whether or not the place is clearly designated, and what guided was whether or not a person could find an appropriate place of use.

The COURT.—Who passed on the question as to

(Testimony of John B. Marshall.)

whether or not it was clearly designated—does that involve any construction?

A. Well, the situation I meant was this: Sometimes it said to be used on a certain mining claim; I took that to be a designation of the use. Sometimes there are occasions where it gives courses and distances to a site where it was to be used—that, of course, was absolutely without any question; where it was placer mining claims the water location [1281—1131] notice was for working a certain placer claim—I took it that the place of use was on that claim.

The COURT.—What I mean, did you find any instances where the notice itself did not say anything about where it was to be used—I am not talking about clearly or not clearly, but whether you found any instances where any reference to the place where it was to be used was omitted, when, as a matter of fact, in the paper that Mr. Hellenthal handed you, it was shown that it did show where it was to be used?

A. Well, I think it is possible that some of the determinations I came to about it might be open to question; I read them over very carefully before determining and it seems to me that it said in each place; I think the list, as I checked it is an accurate list showing the place of use.

The COURT.—I think the paper is admissible.

(Whereupon said memoranda of water location notices was received in evidence and marked Plaintiff's Exhibit No. 41.)

Q. (By Mr. HELLENTHAL.) Mr. Marshall,

(Testimony of John B. Marshall.)

where the notice designated a place of use, such as being on a certain mining claim, designated one place of use with sufficient definiteness to show it was to be used on a certain mining claim, you have there indicated that it did show a place of use?

A. Yes, sir.

Q. Even though it also showed an indefinite place of use, where it had one definite place of use, regardless of any other indefinite place of use it contained, you have designated it as containing a definite place of use? A. Yes, sir.

Q. So that a notice that would say where the water is to be used was on a certain mining claim or elsewhere, you have indicated it as being definite as to the mining claim, and indefinite [1282—1132] as to the balance?

A. I have indicated it as the place of use.

Q. And where the place is definite, such as being indicated by courses and distances from a certain point, you have indicated that as being definite?

A. Yes, sir.

Q. So that this contains all the notices that give any definite place of use at all, whether they also contain indefinite ones and are open to criticism on that point? A. Yes, sir.

Q. And those are marked by the letters indicated in the legend? A. Yes, sir.

Q. Where the letter A follows a location notice, it means the place of use is designated?

A. Yes, sir.

(Testimony of John B. Marshall.)

Q. And the letter X, no place of use designated?

A. Yes, sir.

Q. It doesn't necessarily mean, then, that you, in making up this list, passed upon the question as to whether or not the place indicated was definite enough to meet all criticisms—the question that you were interested in determining was whether an honest attempt had been made in designating the place of use?

(Not answered because of objection.)

Q. Mr. Marshall, how did you arrive, in examining these notices, where the place of use is designated, at that point to know that was the correct point of use?

A. Well, whenever, from the notice as the same was prepared, one could determine where the place of use was, I put it in and followed it with the letter A, as indicating the place of use; when it was impossible to do that from the [1233—1133] notice, I used the letter X.

Q. What are the legends or letters B and O?

A. The letter B means that it was recorded within ten days or less after the location; and the letter O means that it was recorded—that a period of more than ten days had elapsed after the location before the recording was made.

Q. Wherever you may have found an error in the record prepared by my associates, you corrected the error, and it is now as accurate as you found it from your records? A. Yes, sir.

Q. Mr. Marshall, have you found in your exam-

(Testimony of John B. Marshall.)

ination—did you find any notices that originally, for instance, that did not designate a place of use but afterwards amended to show the place of use?

A. Yes, sir.

The COURT.—Are those mentioned in your report?

A. No; they are not; one, in making up the report could not do that without an explanation.

The COURT.—What I mean is this, is there any way in your report by which a person could get at that—so that anybody would know what you were talking about?

A. With the explanation of the check mark there on the side.

Q. I wish you would explain the mark on the paper in that regard, on exhibit No. 41?

A. Well, where there is a red check mark opposite the notice, it is opposite a defective notice in every instance.

Q. Is opposite a notice that was afterwards amended?

A. I would not say that the notice was absolutely amended by a formal amendment; in some of them the amendment was made, and some of them another notice was recorded by the same parties, covering, in most instances, exactly the same water in [1284—1134] the same location, but designating a definite place of use.

Q. Now, how are the notices marked on that ex-

(Testimony of R. W. Lindsey.)

hibit 41 that were afterwards amended in the manner you have stated?

(Not answered because of objection.)

(Witness temporarily excused.) [1285—1135]

The plaintiff to further maintain the issues on its part, recalled as a witness in rebuttal R. W. LINDSEY, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of R. W. Lindsey, for Plaintiff (Recalled in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Lindsey, you have been sworn?

A. Yes, sir.

Q. Were you with Mr. Wayland when he went up on these upper claims, the Keystone and the Taku Gold and Silver, to look for tunnels that the stakes of those claims were tied to in the patent notes?

A. I was with him one time when we were looking for tunnels.

Q. When was that?

A. I don't remember the exact date; I think it was some time in October, 1910.

Q. In the fall of 1910, anyway? A. Yes, sir.

Q. Did you find any tunnels?

A. We found several tunnels.

Q. Did you find any tunnels that answered the tunnels called for in the patent notes, if you adopted the stakes in the ground as the correct stakes?

(Testimony of R. W. Lindsey.)

A. We did not.

Q. What was the nearest to them that you found, nearest tunnels to answering any of those descriptions?

A. As I remember, it was somewhere from 20 to 25 feet.

Q. If you adopted that tunnel as being correct, how did that throw the other tunnel off that the other stake was tied to? [1286—1136]

A. There was no other tunnel that would fit the tie in the notes; there were several tunnels around there; the nearest one being somewhere about 40 or 50 feet off.

Q. Could you make one tunnel fit another tunnel?

A. No.

Q. Now, Mr. Lindsey, Mr. Wayland, I think, testified that this was on the 12th of October—is that right—will you fix the date as near as you can?

A. Somewhere about the middle of October, I should say.

Q. What year? A. 1910.

Q. Mr. Wayland and you together?

A. Yes, sir.

Q. Now, did you go upon the Lotta claim at any time to see whether there was an excavation there opposite that mill building? A. I did.

Q. What did you find in the way of an excavation—when were you there, Mr. Lindsey?

A. I was there about two weeks ago.

Q. What did you find there in the way of an excavation?

(Testimony of R. W. Lindsey.)

A. I found there was an excavation there.

Q. Was it a recent excavation, or one that had been there for many years?

A. Part of it was covered with brush.

Q. Not a recent excavation? A. No, sir.

Q. Did you measure that excavation?

A. I believe it was about 45x60 feet, as I remember it.

Q. Can it be plainly seen?

A. It can be plainly seen by anyone going down to the mill. [1287—1137]

Q. And it was partly covered by brush?

A. Yes, sir.

Q. Mr. Lindsey, are there any trees on corner No. 6, along where corner No. 6 of the Lotta is, or the stake in the ground? A. Yes, sir.

Q. You know where a number of large trees are around there?

A. Yes, I know there are trees there.

Q. Is that corner tied to any of those trees?

A. Not in the patent it isn't.

Q. Any of those trees given as bearings in the notes? A. No, sir.

Q. Now, Mr. Lindsey, I want to call your attention to Defendant's Exhibit "S"—have you a scale with you? A. No, I haven't.

Q. I also call your attention to the plat marked Defendant's Exhibit "T," which purports to be a copy of the official plat in the Surveyor General's office of the Lotta and other adjoining claims, and I will ask you to step up here to Defendant's Exhibit

(Testimony of R. W. Lindsey.)

“S” and see if Gold Creek is indicated on Defendant’s Exhibit “S” in the same place as it shows on the patent plat.

(Not answered because of objection.)

Q. Mr. Lindsey, I will ask you this question: The creek as shown on exhibit “S,” when was the first time to your knowledge it was ascertained that the creek ran approximately in that way upon the ground?

(Objection to foregoing question not sustained.)

Q. You were, in the year 1910, familiar with the records and data in the office of the Alaska-Juneau Mining Company with reference to the surveys?

(Objection to question overruled, but question not answered.)

Q. What is your name? [1288—1138]

A. My name is *W. R. Lindsey*.

Q. Are you familiar with the records of the Alaska-Juneau Gold Mining Company?

A. I am.

Q. Do you know what those records showed in 1910? A. Not all of them.

Q. I mean as far as Gold Creek and the Lotta claim are concerned?

A. I was familiar with the Lotta.

Q. Now, do you know whether at the time it was a known fact from the surveys of the Alaska-Juneau Gold Mining Company, that Gold Creek crossed the Lotta claim in no such manner as indicated on the Defendant’s Exhibit ‘S’?

(Not answered because of objection.)

(Testimony of R. W. Lindsey.)

Q. Now, Mr. Lindsey, calling your attention to the Defendant's Exhibit "T," and Defendant's Exhibit "S," you will find on exhibit "S" that Gold Creek has been sketched across the Lotta claim—does that approximately show Gold Creek crossing the claim as it shows on the patent plat, the official plat of the Surveyor General's office, being the map which I have called your attention to, exhibit "T"?

(Not answered because of objection.)

Q. Will you, Mr. Lindsey, assuming this creek as platted on there by Mr. Wettrick is in approximately the correct position, will you plat upon exhibit "S," or mark the point where the Mulligan notice would fall upon that plat if the mill were shown to be on the Lotta claim in the position it is shown on the Defendant's Exhibit "T," being the same distance from the place where the creek enters the claim as it is shown on the map, and where the notice would fall if it were placed 150 feet below the mill building—have you now measured the map and found the point where the Mulligan notice would [1289—1139] fall under those circumstances?

A. I have.

Q. Mark that with the letter Q.

(Witness so marked map.)

Q. The point marked by you with the letter Q is the place where the Mulligan notice would fall if posted 150 below the mill, if the mill were platted on the Lotta and the creek were platted in accordance with the official plat in the Surveyor General's office?

(Testimony of R. W. Lindsey.)

A. Measuring down the creek the same distance as it is shown on this map, and going in from the corner and taking that distance from the pencil sketched creek, and then 150 feet below the mill in that position would throw it to the point marked G.

Q. There is another Q on the map—will you mark it Q-2?

(Witness so marked map.)

Q. That is how many feet below the southern line of the Lotta?

A. Approximately 50 feet, on this map.

Q. Now, if the creek were platted as shown in the plat attached to the patent itself, and the same method were followed, where would the Mulligan notice be with reference to the southerly side line of the Lotta?

(Not answered because of objection.)

Q. The mill, Mr. Lindsey, is right in the gulch by the side of the creek, right at the bank of the creek?

A. The new building is.

Q. The new building is right on the bank of the creek, that is the mill building on the Lotta?

A. Yes, sir.

Q. And wherever the creek is, the mill would always remain on the bank of the creek?

A. Yes. [1290—1140]

Q. Then, if the mill building is a fixed distance below the place where the creek enters the Lotta there would be no difficulty in showing on the map where the mill building would stand on the official plat or on any other plat where both the creek and

(Testimony of R. W. Lindsey.)

the claim were shown, would there—there would be no difficulty in doing that, Mr. Lindsey?

A. No; no difficulty in showing it.

Q. I am going to have you take the little plat attached to the patent, exhibit “U,”—I call your attention to that plat, and ask you to plat upon that the mill building in the same position shown on exhibit “S,” and show upon that plat just where the Mulligan notice would fall upon that plat—can you do that?

A. The same position with reference to the creek?

Q. Yes, the same position.

A. It would throw the Mulligan notice at the point marked X on exhibit “U.”

Q. Have you also placed the mill on there?

A. I have.

Q. Mark that mill on exhibit “U,” the place where the mill is.

(Witness does so.)

Q. Would the Mulligan notice then be above or below the line of the Lotta?

A. It would be below the line.

Q. How many feet below?

A. Approximately 40 feet.

Q. Now, I ask you to take exhibit “T” and plat the mill on there, and also the place where the Mulligan notice would fall if posted 150 feet below the mill?

A. I don’t know whether these are drawn to scale or not—these plats. [1291—1141]

Q. This is the official plat here.

(Testimony of R. W. Lindsey.)

A. It would throw the Mulligan notice at the point marked Y on exhibit "T."

Q. Have you also marked the mill on exhibit "T"? A. I have.

Q. Mark that with the word "mill."

(Witness does so.)

Q. How far below the Lotta line would the Mulligan notice be there?

A. Somewhere about 25 or 30 feet.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Did you bring over that map or plat that I asked for yesterday?

Mr. HELLENTHAL.—I will state, your Honor, that that map shows the property up in the upper basin as well as some other matters that we don't wish to make public, and we didn't wish to bring it over.

Q. Mr. Lindsey, how long have you been working for the Alaska-Juneau and the Treadwell people?

A. Well, I first started to work for them in the fall of 1908.

Q. You have worked for them ever since 1908?

A. Not all the time.

Q. Well, what length of time between 1908 and the present time have you been out of their employ.

A. I have been working for them about five years.

Q. You were in their employ in August, 1910, weren't you? A. I was; yes, sir.

Q. You were never called upon prior to August,

(Testimony of R. W. Lindsey.)

1910, to make [1292—1142] any sort of examination and location of these various objects that you have located for Mr. Hellenthal on these maps and plats, were you?

A. No; not prior to August, 1910.

Q. You were never called upon to make any such investigation? A. No, sir.

Q. And as an employee of the Alaska-Juneau Company, prior to August, 1910, you were never called upon by Mr. Kinzie, or Mr. Wayland, or anyone else, to go up there to make any survey to ascertain where the lower side line of the Lotta claim was, were you? A. No.

Q. You had nothing to do with sending Lock Muligan on these premises to post any water location notice in August, 1910, or any other time, did you, Mr. Lindsay? A. No; I did not.

Q. Has Wayland been in the employ of the Alaska-Juneau Company the same length of time you have been in the employ of that company?

A. I don't know when he started to work for the company.

Q. Was he with the company when you came here? A. He was.

Q. And is with the company now?

A. I think so.

Q. Is Mr. Wayland a superior officer in the Treadwell Company in regard to the surveying department? A. He was at that time.

Q. Is he yet?

A. I am not in the surveying department—I don't know.

(Testimony of R. W. Lindsey.)

Q. You have charge of another and distinct part of the business at the present time, Mr. Lindsey, have you? [1293—1143] A. I have.

Q. Now, Mr. Lindsey, you said that you and Mr. Wayland went up there on the property of the Ebner Gold Mining Company, what day in October, 1910, to ascertain where a certain tunnel is located, which tunnel is referred to on Defendant's Exhibit "S" as the tunnel just above the lower side line of the Keystone Lode claim?

A. I didn't say what day I went up there.

Q. What day was it?

A. I said I didn't know exactly.

Q. It was after August 1st, 1910, wasn't it?

A. It was.

Q. What month was it in?

A. It was in October.

Q. Was it subsequent to October 3d?

A. I believe it was.

Q. It was after you people undertook to put your dam in up there on Gold Creek, wasn't it?

A. I believe so.

Q. You never made any survey to ascertain anything about where the lower side line of the Lotta claim was before you put your dam in there, did you? A. I did.

Q. You never testified concerning any such one, did you?

A. I did; I have testified several times about it.

Q. Did you in this case?

A. I don't know whether I did in this case or not;

(Testimony of R. W. Lindsey.)

I did in the preliminary hearing, I believe.

Q. It was some time in October, 1910, when you and Mr. Wayland went up there to ascertain whether or not that tunnel, which was just above the lower side of the Keystone Lode Claim and [1294—1144] shown upon Defendant's Exhibit "S," was in the place that was called for in the field-notes, was it?

A. I don't know whether that was the time or not; I haven't scaled it off on that map to see.

Q. Did you have the official field-notes when you and Mr. Wayland went up there to ascertain this fact?

A. We had them over at the office; I don't know whether we had them that day or not; we had a copy of them.

Q. Of the patent notes?

A. We had a copy of the official notes of the survey.

Q. You had them with you up there?

A. Mr. Wayland had them—I didn't have them.

Q. Do you know whether or not the official plat in the Surveyor General's office, a copy of which has been offered in this case as Defendant's Exhibit "T," corresponds with the exhibit that is attached to the United States patent that is offered in evidence in this case and marked Defendant's Exhibit "U"—do you know whether these are the same or not?

A. Well, I couldn't say without checking them over; I haven't had a chance to check them over.

(Testimony of R. W. Lindsey.)

Q. You haven't checked them over at all?

A. Not this one; no.

Q. If that was just sketched in in the recorder's office and this was a copy of it, which would be more apt to be correct, the sketch of the Surveyor General's office or the one sketched in in the recorder's office?

(Objection to question and question withdrawn.)

Q. I will ask you, Mr. Lindsey, if you have had any experience in surveys for patents?

A. I never made any patent surveys; no.

Q. You are not a United States Deputy Mineral or Land Surveyor [1295—1145] at all?

A. No; I am not.

Q. You have never had anything to do with filing surveys for patent in the land office?

A. No, I have not.

Q. You know nothing about the procedure, what constitutes the complete plat and map?

A. I don't know the full procedure.

Q. You have never compared this sketch that has been offered in evidence in this case with the official map or plat or field-notes of the Lotta claim?

A. No; I never have.

Q. You don't know whether it is correct or incorrect? A. I don't know anything about it.

Q. Then, in tracing these objects upon the map, not knowing whether or not those plats are correct or incorrect, you don't know whether your placing of the objects which Mr. Hellenthal asked you to place upon those maps is correct or incorrect?

(Testimony of R. W. Lindsey.)

A. I was assuming the plat was correct in that case.

Q. If the sketch is wrong, then, of course, there would not be much to rely upon in your locating certain objects upon it?

(Question not answered because of objection.)

Q. Did you ever take the patent field-notes or the patent itself, of the different surveys that are included in the patent of the Lotta claim, and undertake from these field-notes, and from the ties to the monuments referred to therein, to locate the Lotta claim?

A. I never followed out all the ties; no.

Q. Did you ever examine the Lotta Lode claim in 1910 to ascertain what stakes were on it? [1296—1146] A. I did.

Q. When did you go up on the Lotta lode claim or any of the adjoining claims, the Taku, the Keystone or the Crown Point, to ascertain whether or not there were any stakes or monuments on them?

A. I was on there several different times.

Q. Well, what was the first time?

A. The first time was about the 28th or 29th of August.

Q. 1910? A. 1910; yes, sir.

Q. Did you find any stakes on the Lotta claim at that time? A. Not at that time; no.

Q. Did you look for any? A. I did.

Q. You don't want the Court to understand that on the 28th of August there wasn't upon the Lotta claim the stake which is referred to as stake No. 5 on

(Testimony of R. W. Lindsey.)

Defendant's Exhibit "S," and then following on up the lower side line of the Lotta you struck another stake, which is the first one on that line after leaving stake No. 5, marked in red on the same exhibit; and also that there was a corner post No. 6 and the end line No. 4—you don't want to state that in 1910 those stakes were not there, do you?

A. I didn't make any such statement.

Q. You said you didn't find them.

A. That is what I said; yes, sir.

Q. Did you make a good search for them?

A. As much as I had time that day; I couldn't go all over that claim in half an hour or an hour.

Q. That was on the 28th of August, 1910?

A. The 28th or 29th, I don't know which. [1297—1147]

Q. What time did you go up there?

A. I went up after lunch that day.

Q. You didn't have time to look up any stakes?

A. As far as I had time I did.

Q. Well, don't you know, Mr. Lindsey, at that time there was a well defined brushed out line on the lower side line of the Lotta claim?

A. I do not know it; no.

Q. Did you ever walk up the Basin road about that time or before that time, and look across the creek to see whether or not you could see a well-defined brushed out line on the Lotta claim?

A. I saw it after that time—several weeks later.

Q. How many times had you been up the Basin road prior to August 28th, 1910, Mr. Lindsey?

(Testimony of R. W. Lindsey.)

A. How far up the Basin road do you mean?

Q. Up as far as the Lotta lode claim.

A. I believe three or four times.

Q. How often had you been on the Lotta lode claim prior to August 28, 1910?

A. The same number of times—had to cross the end of the Lotta going up the Basin road.

Q. Was it you who went up and helped Datson locate the Oregon lode claim? A. No, sir.

Q. You were not with Datson when he located the Oregon? A. Had nothing to do with that.

Q. Now, then, you and Mr. Wayland, in attempting to ascertain something about a tunnel that is just above the lower side line of the Keystone lode claim, in 1910, didn't examine the upper end line, which is a continuous straight line of the [1298—1148] Crown Point lode claim, the Keystone and the Taku Gold and Silver and the Lotta lode claim—you didn't go along that line, did you?

A. Went only part of the way.

Q. Did you see any stakes along that line, then?

A. I remember seeing some stakes, but I don't remember now just what they were.

Q. Had you, prior to the time you and Mr. Wayland went up there found out whether there were any corner stakes or end stakes on the Lotta lode claim?

A. Yes, sir.

Q. And you found some stakes, you say, on this continuous straight line that is referred to on this exhibit "S" as the upper end line of the Crown Point, the Keystone, the Taku and the Lotta?

(Testimony of R. W. Lindsey.)

A. I didn't see all the stakes; there was one, I remember, at corner No. 6.

Q. Did you have the field-notes along with you to ascertain whether or not in running up this common end line I have referred to there were any ties?

A. Mr. Wayland had the notes with him.

Q. Did you look them over yourself?

A. I looked them over; yes, sir.

Q. Did you ascertain from the field-notes whether there were any ties along that upper end line?

A. I don't remember any particularly just now, except that one to the tunnel and the one to the mill.

Q. Well, now, Mr. Lindsey, will you look at this plat here that has been offered in evidence and see if you can find any other ties there between the tunnel and the mill—I will ask you this question to save time: Do you know whether there are [1299—1149] any other ties there in the field-notes of the patent other than the two you have just mentioned?

A. I know there is one tie to the mineral monument, that is the only one I remember now.

Q. Don't you know as you go up that end line that is common to the claims I have just mentioned, the Lotta, the Keystone, Crown Point and the Taku, all of them that are contained in that patent are tied up to each other and one another by common corner posts?

A. The notes call for common corner posts.

Q. Did you and Mr. Wayland undertake to find any of those common corner posts, and see if those claims were tied in together in order to ascertain the

(Testimony of R. W. Lindsey.)

lower side line of the Lotta claim?

A. As far as we went we tried to get all the ties we could.

Q. Just state to the Court all you got.

A. I don't remember getting any ties.

Q. The only tie then that you and Mr. Wayland used from the field-notes of the patent of the group of claims in question was the tie that you were looking for; that was made in running the lower side line of the Keystone lode claim, to a certain tunnel—that was the only tie you used?

A. We didn't use that because it wouldn't check.

Q. What was your purpose in going up there—what were you searching for, Mr. Lindsey, when you and Mr. Wayland were there—were you looking for the tunnel, or what were you looking for?

A. We were up there to tie in that tunnel; I don't know what instructions Mr. Wayland had; I went up with Mr. Wayland; he was in charge of the work.

Q. Then, as I understand, Mr. Lindsey, you were following out Mr. Wayland's instructions? [1300—1150] A. I was.

Q. You simply went up there under his instructions? A. I went with him.

Q. To find out what? Now, with reference to the tunnel, what did you understand you were to find out with reference to the tunnel just above the lower side line of the Keystone?

A. I don't know which tunnel you are referring to; there are three or four tunnels in a bunch there.

Q. That is what I am trying to find out, Mr. Lind-

(Testimony of R. W. Lindsey.)

sey, what you and he went up there for, as far as you know?

A. One of *things* we went up for was to see if the ties given in the patent notes to those tunnels would fit anything we found on the ground.

Q. That is, to find out whether that tunnel as it is called for in the patent field-notes could be found upon the ground, as it was called for in the patent notes?

A. To see whether there was any tunnel that fitted that tie as called for in the patent notes.

Q. So far as you know then, Mr. Lindsey, that is the only thing that you were up there for?

A. It wasn't the only thing; I know we were up there to find any ties that we could at the same time.

Q. You were instructed to find any monuments on the ground you were looking up?

A. I was instructed to find all the stakes and find all the markings.

Q. What stakes did you find?

A. I don't remember the stakes; it was four years ago and I didn't keep notes; I think Mr. Wayland made notes up there.

Q. Do you remember what stakes you found?

A. I remember corner stakes of the Lotta.

Q. Do you remember any other stakes you found up there in 1910 [1301—1151] on the Lotta?

A. Are you asking me any time in 1910 or that day?

Q. I mean what stakes you and Mr. Wayland found together—I am just confining my examination

(Testimony of R. W. Lindsey.)

now to the trip you and Mr. Wayland made up there?

A. That one day?

Q. Yes, sir?

A. I don't remember any other stakes we found that day.

Q. You found corner No. 6 of the Lotta, corner No. 6 was on the ground, and as it was afterwards established by the Court? A. It was.

Q. Now, is that the only stake which you and Mr. Wayland found that day?

A. I said I don't remember what other stakes we found.

Q. That is the only one that you remember?

A. That is the only one I remember now; yes.

Q. You don't want to state to the Court that the stake No. 5 on this plat, one of the stakes on the Lotta lode, No. 4, and then an intervening stake between 5 and 6, as well as the stake at the upper end line of the Lotta—you don't want to testify that they were not on the ground at that time, do you?

A. I didn't make any such statement.

Q. You don't want to testify they were not on the ground?

A. No; I won't testify there were not any of those stakes on the ground.

Q. Now, was your purpose in going up there to ascertain where the lower side line of the Lotta claim was?

A. I suppose one of the purposes was to ascertain the exact lower side line of the Lotta.

Q. How long were you and Mr. Wayland up there

(Testimony of R. W. Lindsey.)

to ascertain [1302—1152] about that, Mr. Lindsey? A. That day?

Q. What length of time did you and Mr. Wayland together work to ascertain the lower side line of the Lotta that day, or any other time?

A. We were up there a number of times.

Q. Well, I will confine it to this one particular time? A. We were there all day that day.

Q. Did you ascertain where the lower side line of the Lotta was that day?

A. It was a pretty hard thing to do definitely at that time.

Q. It was a pretty hard thing to do because you hadn't located any other stakes or any other ties, had you, Mr. Lindsey? A. Yes, I had.

Q. Why didn't you find these stakes then, 5 and 4?

A. I already knew those were in at that time.

Q. When did you find out they were there?

A. Sometime in September.

Q. 1910?

A. Corner No. 5 of the Lotta, witness corner for corner 4 of the Forrest—I knew that those were there in September, 1910.

Q. You knew at that time, too, Mr. Lindsey, that the survey of the Lotta, Taku, Keytsone and Crown Point, and I think the Golden Fleece, were surveys that are all included in one patent, and you knew from the field-notes that they are tied up with each other and with one another?

A. I didn't know at that time they were all in one patent—I knew they were all separate surveys.

(Testimony of R. W. Lindsey.)

Q. You didn't examine the field-notes?

A. I did examine the field-notes—I didn't examine the patent. [1303—1153]

Q. They were continuous right along, weren't they?

A. I don't remember whether they were all put together at that time.

Q. Mr. Lindsey, as a surveyor, if you were to go upon the ground to honestly undertake to locate a lode claim, I will ask you if you would not make a careful examination of the field-notes and all of the ties in it and the courses and distances, and the monuments, and then go upon the ground and see whether you could find any monuments or any stakes, and use all the data that you could gain both from your field-notes and from what you found on the ground in order to locate the claim—would you use that?

A. I would, if I had the time to put in that it would take.

Q. Were you so rushed when you went up there that you didn't have time to do that?

A. I didn't go over there except the times I was told to go.

Q. If you had, Mr. Lindsey, upon an examination of the field-notes found that corner No. 4 of the Lotta was in, corner No. 5 was in, the intermediate stake between 5 and 6 was in, No. 6 was in, and the one at the upper end of the Lotta in, and all marked "Survey 87," and the Lotta was Survey No. 87; and then you were to find out that in the field-notes and the survey they ran around the Lotta claim, and came

(Testimony of R. W. Lindsey.)

on back to corner No. 1, which is marked on this Lotta Lode Claim as 1, and went right up to the upper corner of the Lotta, continued right in a straight line, the same course as the end line of the Lotta, and went right up and made certain ties to certain corners, and went around and located the Taku lode claim, and tied that to the Lotta, and continued this survey right up that way, wouldn't all of those facts have been of very material help to you in locating [1304—1154] the Lotta lode claim on the ground—they would, as a surveyor, wouldn't they, Mr. Lindsey?

A. They certainly would all be considered.

Q. But you didn't have time that day to look them up and consider them, did you?

A. You couldn't do it all in one day.

Q. Now, then, I will take some of the questions I think were propounded to you the other day—you testified the other day, Mr. Lindsey, something about being up there lately, I think, to ascertain whether or not any of the dam of the Alaska-Juneau Company as it is now constructed was upon the Lotta lode claim; you testified to that the other day, didn't you?

A. No, I didn't testify to that.

Q. When Mr. Hellenthal had you on the witness-stand?

A. No; I haven't been up there to see anything about the dam lately; I didn't testify to any such thing as that, because I haven't been up there.

Q. You have been up there to ascertain whether or

(Testimony of R. W. Lindsey.)

not the dam as it is now constructed is on the Lotta lode claim as established by Judge Cushman, haven't you, didn't you make any survey to ascertain that?

A. Not lately; no.

Q. Didn't you state the other day, Mr. Lindsey, when you were upon the witness-stand that you had been up there and took some look over that line of the Lotta—the lower side line—to ascertain the exact location of the dam of the Alaska-Juneau Company—didn't Mr. Hellenthal the other day ask you some questions pertaining to that?

A. He didn't ask me any questions about that this year—if you will state a time in your question—
[1305—1155].

Q. You haven't been up there this year?

A. I have been up there this year, but not to make any surveys.

Q. Did he ask you any questions the other day as to whether or not you had made any examination to find out the exact position of the dam after you made the change—after Judge Cushman's decision?

A. I don't know whether he asked me any such question or not, but I haven't done it.

Q. I am mistaken then, I thought you had made the statement—I will drop it. I believe there were some questions asked you by Mr. Hellenthal about when you and Mr. Wayland went up there to ascertain where the Mulligan notice was—you saw the Mulligan notice, didn't you? A. I did.

Q. That Mulligan notice was approximately how far up on the Lotta claim, according to the boundary

(Testimony of R. W. Lindsey.)

line established by Judge Cushman, and according to the stakes on the ground—how far above that on the Lotta?

A. I don't remember what it was now; something like—I know it was 140 feet below the mill; I don't remember how far it was above the line.

Q. I will ask you if it isn't a fact, Mr. Lindsey, that after you had discovered where these stakes were on the Lotta lode claim in 1910, that you moved your dam further down the creek from where you undertook to construct it in the first place?

A. It never was moved from where it was first constructed.

Q. Are you sure of that?

A. It wasn't changed—I know it wasn't.

Q. Well, you know the place of intended diversion was changed by your company after you found these lower corner stakes of the Lotta claim, don't you?
[1306—1156]

A. I suppose it must have been—the dam wasn't put in where the Mulligan notice was.

Q. Now, on August 28th, didn't you know where all of those stakes were on the lower side line of the Lotta and at the center end line?

A. I didn't know where any of them were.

Q. You stated a while ago you knew where corner No. 6 was on the 28th day of August, 1910?

A. I didn't say anything of the kind.

Q. Wasn't that on the 28th of August?

A. We went up there on the 28th or 29th of August.

(Testimony of R. W. Lindsey.)

Q. Didn't you say that you ascertained on the 28th of August where such a stake was.

A. I didn't say any such thing.

Q. You knew where the intermediate post between 5 and 6 was on the Lotta when you were up there on August 28th, written on one side "Survey 87"?

A. I don't know whether it was or not; I didn't find it that day.

Q. You were not looking for it, were you?

A. I was looking for everything I could find.

Q. You didn't find anything at all—you didn't find the cut up there, did you? A. What cut?

Q. The tunnel that is over there and tied to it?

A. That tunnel hasn't anything to do with the Lotta claim.

Q. Don't you know in those patent field-notes that you hold in your hand which is part of the patent, that the beginning corner is No. 1, marked on this Defendant's Exhibit "S," and then they go ahead and go around the Lotta lode claim and mark its boundaries and come back to No. 1, go up to the upper corner, and then commence the survey of the Taku, [1307—1157] and tie that all into the common post—do you know that the field-notes show that?

A. The field-notes show that the beginning of the Lotta is corner No. 1, and the beginning of the Taku is corner No. 1 of the Taku Gold and Silver.

Q. Don't you know that the field-notes tie them up to a common corner post, and continue that way?

A. The notes have common corner posts.

(Testimony of R. W. Lindsey.)

Q. And then they run up that line, down the lower side line of the Keystone, all in this one common patent, and when they come down to a certain point in that they tie up to a certain tunnel; now, if the Keystone is tied up to the Taku Lode and the Taku is tied up to the Lotta lode claim, do you want to say that the Lotta claim is not tied up to the tunnel?

A. I said the survey of the Lotta lode didn't call for any tie to that tunnel.

Q. I am asking you to take the field-notes as set forth in the patent and follow them up, of all the mining claims in there, and then I will ask you if you want to state in doing that that the Lotta Lode claim is not tied to the tunnel that is near the lower side line of the Keystone—I mean, taking all the field-notes in that patent?

A. It is tied to other claims indirectly, but not in the survey of the Lotta claim; the survey of the Lotta claim does not call for that at all.

Q. You mean to go into this patent and pick out the Lotta lode claim, and then you want to say the Lotta is not tied to the tunnel?

A. That is what I said.

Q. Don't you know that is all one patent?
[1308—1158]

A. I never saw the patent at that time.

Q. I am asking you now—don't it give all these claims, 88, 89, the Crown Point, and so forth,—don't it give an aggregate of all these claims in this patent?

A. It does.

Q. Now, look over here at the beginning of the

(Testimony of R. W. Lindsey.)

patent—and “It appears that Samuel Coulter did, on the 10th day of June, A. D. 1889, duly enter and pay for that certain mining claim or premises known as the Lotta, Taku Gold and Silver, Keystone, Crown Point, Golden Fleece, Grand Review and Jewel Lode Mining Claims, designated by the ex-officio Surveyor General as lots Nos. 87, 88, 89, 90, 91, 92 and 93 respectively”—all included in one survey, aren't they?

A. No, they aren't; they are different surveys.

Q. All included in one piece of ground in the patent?

A. All included in one patent.

Q. One piece of ground as described, and it takes in all of them?

A. The patent takes in all of them.

Q. Do you want to say that being the case, and when the survey runs right along the upper side lines of these various claims and runs down the lower side line of the Keystone that the Lotta claim is not by that survey tied to the tunnel?

A. It is tied indirectly—it is not tied directly.

Q. It is a tie, isn't it? A. Yes.

Q. But you modify it by saying indirectly?

A. You could get that tie by following out all the surveys up there.

Q. You and Wayland did not attempt to find that one single tie to the tunnel on that day, did you?
[1309—1159]

A. On that particular day we didn't try to find anything else.

(Testimony of R. W. Lindsey.)

Q. You and Mr. Wayland did go back to make a report when you found out where the lower side line of the Lotta was, didn't you? A. No.

Q. Didn't make any report on it then? A. No.

Q. When did you report, that you found the lower side line of the Lotta claim?

A. I didn't make any report on it; Mr. Wayland had charge of that.

Q. What was the first time you were up there after August 28th, looking for this lower side line, do you remember?

A. I was there some time in September.

Q. Do you remember the date?

A. No; I don't remember the exact date.

Q. Did you find the stakes then?

A. I found corner No. 5 of the Lotta and the witness corner 4 of the Forrest sometime in September.

Q. And corner No. 6, didn't you?

A. I don't remember when the time I saw corner No. 6 was.

Q. That was prior to September 12th, wasn't it, or 10th?

A. It was about that time—I don't remember the exact date.

Q. It was before you established the grade that you ultimately built your flume line upon?

A. Oh, no; it was after—oh, yes; it was after that—after we established the grade the flume line is built on now.

Q. You established a grade for the flume line about September 12th, you and Mr. Wayland?

(Testimony of R. W. Lindsey.)

A. About that; yes,—that is the reason the dam was moved down and the flume was put in the present position; we wanted to be sure to be off the Lotta claim.? [1310—1160]

Q. And the dam was moved down in view of the survey you and Mr. Wayland made there on September 12th?

A. It was to be sure to be off the Lotta claim.

Q. That was the first time you made a good survey to find out where the lower side line of the Lotta claim was, and that was the first time you examined that—was that the first time you came to the conclusion of where the lower side line of the Lotta was?

A. I didn't come to the conclusion that the lower side line of the Lotta was at that place at the time.

Q. When did you come to that conclusion?

A. I didn't come to the conclusion, I didn't have anything to do with it; I was told to locate the flume grade and the dam was moved off the Lotta claim.

Q. That was before the case was tried before Judge Cushman—that was about the 10th or 12th of September, 1910?

A. That was September 12th, or sometime in there.

Q. 1910? A. Yes, sir.

Judge WINN.—That is all.

(Whereupon court adjourned until 2 P. M.)

(Testimony of R. W. Lindsey.)

AFTERNOON SESSION.

August 8th, 1914, 2 P. M.

R. W. LINDSEY on the witness-stand.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Lindsey, Judge Winn asked you what you did in the way of making a survey and locating the southerly line of the Lotta, I think on the 28th or 29th of August, 1910— [1311—1161] will you please testify now as to just what you did in that connection and what you found as the result of your efforts?

A. We started at corner No. 5 of the Idaho and ran a line up the creek and located the Mulligan notice; and then from the patent notes figured the location of this notice with reference to the Lotta claim, and also platted it on the map.

Q. You started it from corner No. 5 of the Idaho making the survey as you have indicated that you did in that connection, and located the Mulligan notice in that manner, with reference to the field-notes of the patented claims— did you find the Mulligan notice on or off the Lotta claim?

A. It was off the Lotta claim.

Q. Below it? A. Yes.

Q. Mr. Lindsey, you stated that you were given instructions to be sure and keep the dam off the Lotta—I think you made a statement in answer to Judge Winn's question that was the occasion for moving the dam; was it for moving the dam or moving the survey of the dam.

(Testimony of R. W. Lindsey.)

A. If I made such a statement I didn't intend to; all that was done was making another survey.

Q. The dam itself was never moved?

A. There was no dam in there at that time.

Recross-examination.

(By Judge WINN.)

Q. Now, Mr. Lindsey, let me see—you made a survey on September 12th, 1910, to make a grade, and you did survey a grade upon which you afterwards built your flume? A. No. [1312—1162]

Q. What survey was this you made on September 12th, 1910?

A. I ran a level line from the upper water tunnel up the creek for the grade; when I found it was too high for the position of the dam I reported it to Mr. Kinzie and he told me to make another survey and move it down; that is where the second tunnel was started, and the dam was put where it is now.

Q. Don't you know that upper tunnel was started with the expectation of taking water off the Lotta claim?

A. I do not; no sir—the upper tunnel?

Q. You know if you had run that grade on the grade of the upper tunnel it would have taken the water off the Lotta claim approximately where the Mulligan notice is posted?

A. It would have taken it from there some place; that is why it was moved down.

Q. Now, then, there was no work done on your flume line looking towards taking water out of Gold

(Testimony of R. W. Lindsey.)

Creek on your present grade until after September 12, 1910, was there?

A. Not on the present grade; no.

Q. Then Kinzie's people went ahead and put their dam in Gold Creek first without having established any grade, didn't they? A. No.

Q. Why, they didn't have part of the flume in there on September 12th? A. No.

Q. Didn't have any part of the dam in there on September 12th? A. No.

Q. No part of the dam was built by the Alaska-Juneau people prior to September 12th, 1910?

A. No. [1313—1163]

Q. Of course, you naturally went ahead, Mr. Lindsey, and established your grade before building your dam, didn't you? A. Certainly.

Q. Yes, that is the logical way to do it. Now, you testified to Mr. Hellenthal a few moments ago that some time in August you ran a traverse line from some point on the Idaho claim, was it?

A. We ran a line from corner No. 5 of the Idaho.

Q. Where is the Idaho with reference to anything that is on Defendant's Exhibit "S," Mr. Lindsey?

A. The Idaho, it is a point, I suppose, that is what is supposed to represent point No. 5 (indicating)—just below the Colorado claim.

Q. In an easterly direction from the Colorado claim? A. No, westerly?

Q. The Idaho and the Colorado claims are all claims that were patented subsequent to the Lotta claim, were they not? A. I believe so.

(Testimony of R. W. Lindsey.)

Q. There isn't anything in the field-notes of the Lotta patent that refers to either one of those claims, is there?

A. No, but there is in those claims that refer to the Lotta.

Q. And that is the reason that you took that as the point, isn't it?

A. That is one of the reasons, yes; because it was tied to the Lotta through these other claims.

Q. You thought that was a good way to locate the Lotta, did you?

A. About the only way to locate it at that time.

Q. Were not the stakes of the Lotta on the Lotta side line at that time? [1314—1164]

A. I don't know; I suppose there were some stakes there; I didn't see them.

Q. If it has been proven they were there, wouldn't it be easy to go up and look for the Lotta, which is one of the largest *claim* on the creek?

A. It would, if you could find them.

Q. You noticed that line brushed out there in 1910?

A. Not at that time.

Q. What time did you? A. Some time in 1910.

Q. And you undertook then to survey and to locate the Lotta?

A. We didn't make the survey until Mr. Hill made those surveys.

Q. And so from your own patents you undertook from the field-notes of those to locate the Lotta?

A. Yes, sir.

Q. And that was what date?

(Testimony of R. W. Lindsey.)

A. That was on the 28th or 29th of August, I couldn't say which date.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Corner No. 5 of the Idaho was a well-known corner, was it not, Mr. Lindsey? A. Yes.

Q. Mr. Lindsey, when you were up there on the 28th or 29th of August did you cross the lower side line of the Lotta, as marked between stakes 5 and 6 in the ground? A. Yes, sir.

Q. And you didn't observe at that time any brushed out line? A. I did not.

Mr. HELLENTHAL.—That is all. [1315—1165]

Recross-examination.

(By Judge WINN.)

Q. Just one date I want to fix a little more definitely. Now, let's see, Mr. Lindsey—maybe I got mixed up on this—as I understand it you made a survey of the upper tunnel grade on September 12th, 1910, and about a week later than that you made a survey of your present grade and the grade upon which your flume was ultimately constructed?

A. It was several days later, I wouldn't say it was a week.

Q. You testified before in this case it was about a week subsequent to the 12th, didn't you?

A. It was several days later, I wouldn't say just how much.

Q. If you said about a week then your memory was pretty fresh on it, wasn't it, in the Basin case?

(Testimony of R. W. Lindsey.)

A. I don't know if it was any fresher then than it is now.

Q. It is here as follows—Page 1036 and 7 of Volume 3, of Cause No. 2155 of the Circuit Court of Appeals:

“Q. Were you employed to go up there, instructed to go up there and locate a flume grade? A. I was.

Q. When did you do this? A. I believe the first survey was made on September 12th for the flume”—you remember testifying to that?

A. I believe I did.

Q. “Q. You located both ends of the grade? A. Yes, sir. Q. Is that the present grade? A. No; it was about 16 feet, I believe, above the present grade.

Q. That is the height of the original tunnel? A. Yes, sir.” Did you testify to that?

A. I believe I did.

Q. “Q. When did you locate the second grade? A. I think it was about a week afterwards approximately. I don't know [1316—1166] exactly”—you testified to that didn't you? A. I think so.

Judge WINN.—That is all.

Mr. HELLENTHAL.—Mr. Lindsey, in answer to Judge Winn's question, did you mean to say there was no work done there in building houses and trails and things of that kind until after that survey was made, or did you mean to say there was no work done in excavating that particular place until after that survey?

A. That is what I said, there was no work done on that particular grade; there was a lot of work done

(Testimony of R. W. Lindsey.)

around there before that.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1317—1167]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal EDWARD WEBSTER, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of Edward Webster, for Plaintiff (In Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name? A. Edward Webster.

Q. Where do you live? A. Juneau.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. When did you come to Juneau? A. 1881.

Q. What occupation did you follow when you came here? A. Mining.

Q. How long did you follow that occupation?

A. Until 1889.

Q. Where did you follow it?

A. In Silver Bow Basin.

Q. In the Harris Mining District? A. Yes, sir.

Q. You at one time operated the mine known as the Humboldt? A. Yes, sir.

Q. That is situated right above the Ebner mine?

A. Yes, sir.

Q. Were you here when the Harris Mining District was organized?

(Testimony of Edward Webster.)

A. No; I came in 1881, and I think it was in the fall of 1880 it was organized. [1318—1168]

Q. Anyhow, you know it was organized about that time? A. Yes, sir.

Q. Do you recall the miners' meeting called in the latter part of the year 1888 for the purpose of passing upon the question—that is, discussing or deciding upon the question as to whether the Commissioner for the Juneau District should thereafter be recorder for the Harris Mining District without further election?

(Not answered because of objection.)

Q. You remember there was a meeting called in 1888 of the miners? A. Yes; I do.

Q. Toward the fall of the year? A. Yes, sir.

Q. What was the purpose of calling that meeting?

A. The way I understand the purpose of it was to decide for the recording district what the recorder should do; at that time there seemed to be two recorders, and they decided then that the Commissioner should be the recorder for the Harris Mining District.

Q. Did that refer to the present incumbent Commissioner at that time or to all future commissioners?

A. I wasn't at the meeting, I was in the Basin at the time.

Q. I am asking you as to what the meeting was called for.

A. It was called for the purpose of deciding about the recording of the district; it seems there were

(Testimony of Edward Webster.)

two recorders, the court recorder and the recorder that was recording for the district.

Q. And the question was to determine what to do about that? A. Yes, sir.

Q. As a result of that meeting, where has the recording of the Harris Mining District been done since, do you know? [1319—1169]

A. By the Commissioner since.

Q. There were rules in force in the Harris Mining District relating to the appropriation of water and the acquisition of water rights while you were mining, Mr. Webster?

(Not answered because of objection.)

Q. Were the rules in force relating to the appropriation of water and the acquisition of water rights during the years you were mining in the Basin—that is to say from 1882 to 1889?

A. Why, yes—that is, we located our water right in the Basin what we supposed was under the miners' rules and recorded it here; if I remember right old Colonel Dixon was recorder when we recorded our water right.

Q. Now, where were those recorded, do you know, Mr. Webster—the rules that were in force at the time you have testified to—in whose custody were the rules and records?

A. To the best of my recollection it was old Colonel Dixon; he was the recorder when I came here; he had a little place when I came here near the butcher shop.

Q. Were the rules of the district relating to the

(Testimony of Edward Webster.)

water appropriation recorded there with Colonel Dixon? A. As far as I know.

Q. Were those rules as recorded with the recorder relating to the appropriation of water and the acquisition of water rights generally resorted to during the years between 1882 and 1889?

A. As far as I know they were.

Q. Since that time you have not been mining?

A. No, sir.

Q. And you don't know what the rules are now?

A. No, sir.

Mr. HELLENTHAL.—You may cross-examine.
[1320—1170]

Cross-examination.

(By Judge WINN.)

Q. Mr. Webster, you never looked up the records from 1882 to 1889 to find out if the people adhered to any rules, did you?

A. That I couldn't say—everybody was recording here.

Q. About the time in which they recorded, you don't know anything about that with reference to what time they posted the notice?

A. I didn't look over the records to see what time they recorded.

Q. Let me ask you, Mr. Webster, if you attended any meeting of this organization *called the* miners of the Harris Mining District yourself?

A. Yes; I was at one or two—I didn't take any part in them.

(Testimony of Edward Webster.)

Q. Do you remember what year it was that you attended?

A. I think there was one; if I remember right, I was at a meeting in 1882 when I first came here.

Q. Do you remember of having—I will hand you this little book that has been referred to in this case, called “Book, Mining District, August, 1881, to February, 1888”—did you ever see that record-book, Mr. Webster? A. No, sir.

Q. Never saw it? A. No, sir.

Q. I will ask you, Mr. Webster, if you ever attended a meeting which was recorded on page 91 of this minute-book, which I exhibited to you, in which the following resolution was passed: “The regular annual meeting of the miners of Harris Mining District was held on February 12, 1887, to elect a District Recorder for Harris Mining District for the ensuing year. D. H. Murphy, Esq., was chosen Chairman, and John G. Heid, Secretary. There being no opposing candidates for said office of District Recorder, upon motion of S. Lewis the rules [1321—1171] were suspended and Lewis L. Williams, the present incumbent, was chosen the recorder by acclamation. On motion the meeting adjourned *sine die*”—did you ever attend that meeting?

A. I did attend a meeting, but I don’t remember if it was this one.

Q. Lewis L. Williams was then United States Commissioner and Recorder? A. Yes, sir.

Q. And he evidently had been acting as recorder

(Testimony of Edward Webster.)

for the Harris Mining District prior to 1887, hadn't he—do you remember that?

A. I don't remember just what year Williams did take it or what year he came here.

Q. Well, there was a meeting at this place in 1886, the year before—I will ask you if you remember anything about this: "On motion the election was to continue and the polls to be kept open until 4 P. M. of this date. And at 4:15 P. M. the chairman announced the result of the election as follows, viz.: Total number of votes cast, 177; for L. L. Williams, 110; for John Timmons, 64; rejected, 3; L. L. Williams majority, 46. Whereupon L. L. Williams was declared duly elected as Recorder of Harris Mining District for the said unexpired term"—do you remember of attending a meeting of that kind?

A. No; I wasn't there.

Q. On November 17, 1886?

A. No; I wasn't at that meeting; I remember about it, but I wasn't at the meeting.

Q. Now, here is another meeting, Mr. Webster—I will ask you if you remember this one, on page 92 of this record-book of the Harris Mining District that I just exhibited to you: [1322—1172] "The regular annual meeting of the miners of the Harris Mining District, Alaska, was held, pursuant to the regular call, at the courthouse of the Town of Juneau, Alaska, on the 11th day of February, 1888. Upon motion, John G. Heid was chosen chairman, and John Olds secretary. Upon motion of John Curry, Esquire, the rules were suspended and L. L.

(Testimony of Edward Webster.)

Williams, the present incumbent of the office of Recorder for said Harris Mining District, was elected by acclamation, for the ensuing year, as Recorder for said Harris Mining District, Alaska. Dated February 11th, 1888.” Do you remember of a meeting of that kind?

A. I remember of a meeting; I remember when they had that meeting, but I didn’t attend it.

Q. That is the last record of any meeting that is made in this minute-book, February 11, 1888?

A. Now, if my memory serves me right there was a meeting in September, 1888, when they decided for to have the Commissioner as recorder for the Harris Mining District.

Q. He had been recorder for two years before that? A. He was elected every year.

Q. There isn’t any record of any meeting here after February 11, 1888—you didn’t attend any such meeting in September, did you, Mr. Webster?

A. No, I wasn’t at the meeting in September.

Q. You don’t know what took place, of your own knowledge?

A. Not of my own knowledge, but Mr. Van—

Q. I don’t want anything that anybody told you.

A. I intended to go to the meeting that night, because we were going to decide on two or three different things.

Q. The books had been in the possession of L. L. Williams for two years prior to that time—you know that, don’t you? [1323—1173]

A. I know he was recorder then.

(Testimony of Edward Webster.)

Q. And the old courthouse was up on the hill at that time? A. Yes, just about where this one is.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1324—1174]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal JOHN G. HEID, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of John G. Heid, for Plaintiff (In Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is John G. Heid? A. Yes, sir.

Q. Do you live in Juneau? A. Yes, sir.

Q. How long have you lived here, Mr. Heid?

A. Since March, 1885; I think in March, 1885, I think it was.

Q. You have lived here continuously ever since?

A. Yes, sir.

Q. What is your occupation or profession at present? A. Practicing law.

Q. How long have you practiced law here?

A. Ever since 1885.

Q. Are you familiar with an organization known as the ——— A. Yes, sir.

Q. Were you ever recorder of that district?

A. I was.

Q. In what year?

A. I was the last recorder, elected in 1886.

(Testimony of John G. Heid.)

Q. I call your attention now to a little book, from which a portion has been offered and received in evidence, one of the pages of this book purports to be one of the records of the [1325—1175] Harris Mining District—you recognize that as one of the records of the Harris Mining District as the same were in your possession when you were the recorder of the district?

A. Yes, sir; that is one of the books.

Q. Calling your attention now to this book,—how is it marked on the outside, Mr. Heid?

A. That is—part of the label is torn off “Book—Harris Mining District”—this is a minute-book of the miners of the Harris Mining District.

Q. Now, Mr. Heid, while waiting for the book, do you recall a meeting of the miners being held of the Harris Mining District some time in the fall or summer of 1888, called for the purpose of determining upon the future recorder of the district?

A. I cannot recall the time, but there was a meeting which grew out of the uncertainty of the situation of the recorder for this section; it was a long story that led up to it—I could give that too, but to answer the question yes or no, I couldn't give you much information.

Q. You know there was some such a meeting about that time?

A. Some time in the fall; it was for the purpose of weeding out what was called by most people the Mining Recorder and having only one recorder, who was the United States Commissioner, first appointed

(Testimony of John G. Heid.)

by Judge Dawson, who made an order directing me, I being the last recorder, to deliver over all these records to the United States Commissioner—that is how the records got out of the Mining Recorder's hands into the Commissioner's hands.

Q. For a year or two before this meeting was held, the miners held a meeting every year to elect a recorder?

A. Held their elections every spring, and held their meetings [1326—1176] every spring.

Q. And the Commissioner has always acted as Recorder ever since?

A. In the fall of 1886 Judge Dawson, who was appointed judge, came back out here—in 1884, when Congress passed the Organic Act giving some kind of a civil government to Alaska, it provided also for commissioners who would have to be recorders, and the Court would have to appoint them for the recording district; Judge Dawson was sent out here, and the first thing I knew I was served with an order signed by Judge Dawson, in the fall of '86, to turn over all my records to the United States Commissioner—that he was now the Commissioner of the Juneau Recording Precinct and it included—

Q. That included within its boundaries the Harris Mining District? A. Yes, sir.

Q. And to settle this conflict, the meeting was called in the fall of 1888?

A. It was in the fall, and it was called to get the miners together for the reason some of them were dissatisfied—a lot of the old-time prospectors and

(Testimony of John G. Heid.)

miners didn't like the idea of anyone coming in here and interfering with their mining organization,—they were dissatisfied and wanted to proceed and elect a recorder—that is how it came about that these meetings were called; many of the miners didn't want the conflict—they only recorded location notices and things of that kind with the mining recorder, and recorded mortgages, deeds and things of that kind with the Commissioner, and it would simply make a conflict between the records here, and for that reason the majority of the miners wanted to call an election and elect their own recorder for the district, then [1327—1177] they proceeded the next year again, but the majority were opposed to it, and then finally in 1888 it was in such a way that we never heard anything more of it; the miners gave up the idea of electing their own recorder after that.

Q. And then they decided that the Commissioner should always be the recorder?

A. No records were made after I resigned; the Commissioner had all the records.

Q. After that meeting was held the Commissioner had all the records as the recorder for the Harris Mining District?

A. Yes; the Commissioner acted as the recorder for the Harris Mining District absolutely.

Q. And always has so acted ever since that meeting?

A. No other recorder in existence; they were all turned over to him.

Q. I now call your attention, Mr. Heid, to another

(Testimony of John G. Heid.)

book from which a page has been read in evidence, produced from the records of Mr. Marshall's office, and ask you if you can identify that as one of the records of the Harris Mining District when you were recorder? A. Yes, sir.

Mr. HELLENTHAL.—This is a book numbered 1 of Placer Claims and Water Claims, 1881 to 1888.

Q. This other book that you have already referred to as being the minute-book of the Harris Mining District, commencing in 1881, to February, 1888, that is also one of the records that was in your possession as Mining Recorder? A. Yes, sir.

Q. Now, Mr. Heid, do you know whether the rules of the miners as recorded in this book relating to the appropriation and acquisition of water rights, limiting the question to water [1328—1178] rights and not referring to the other rules, have been generally observed by the miners from the time that the rules were adopted up to the present time?

A. Now, I want to say this much, that Judge Dawson, about the mines, felt as though the decision of the Court would govern those things, but as to the acquisition of water it is the only law in existence to-day; I don't know of any other law—it is simply an appropriation.

Q. Were these rules relating to water rights generally observed by the miners from that time on up to the present time in the Harris Mining District?

A. I don't know of any other laws in existence except that in this district; there is no special legislation on the acquisition of water in Alaska.

(Testimony of John G. Heid.)

Q. Have the miners generally followed these rules?

A. They do now as they did then—I mean, in the way of posting their notices, saying how many inches, and saying where they wanted to use it.

Q. And recording the notices?

A. I guess everyone did; I don't know within what time; if a person makes any location I guess they have it recorded.

Q. Do you know that they generally followed these rules?

A. Yes; I think that 99 out of 100 that located any water would record it.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Recorded but never recorded with respect to any time, have they, Mr. Heid?

A. I didn't look—I don't know what the individuals did. [1329—1179]

Q. Now, Mr. Heid, did you ever, as an attorney, search the records here to find out how many water locations you have made out for clients and filed?

A. No.

Q. Don't you know that a large majority of the water locations you have made out and filed in the records here have been recorded all the way from 10 days to three months after they were posted on the claims—that is, you know that that rule as to a specified time for recording hasn't been observed, don't you?

(Testimony of John G. Heid.)

A. I want to say this that between the 1st of June and the 1st of October, and after that time between the 1st of October and the 30th of May, that there is a vast difference, and I don't know whether I ever did record in those days from that time on.

Q. That is after the records were turned over to the recorder?

A. I didn't watch it, then, but, as I say, I don't know of any special legislation with reference to water rights in Alaska, excepting those rules that had been observed all the time.

Q. Do you know whether or not they observed that part of the rule pertaining to the commencing of work within 20 days after they filed their location notice?

A. I will tell you right now, you could ask the average miner and he would tell you the same thing, that he has right along.

Q. That they have commenced work *with* 20 days? A. Followed the old custom.

Q. How many have been doing that—how many of your clients have been doing that?

A. I haven't followed it up to see what they did.

Q. Do you know that the miners of to-day are following that rule—that they have to commence work within 20 days, and record it in 10 days—do you know of such a rule existing to-day? [1330—1180]

A. There may be such a law; it depends on what the people do, that is what establishes a custom;

(Testimony of John G. Heid.)

whether there is a law and whether they do it or not I won't say.

Q. If they don't do it, you won't say, as an attorney, that it was a custom?

A. It would depend—if it was generally done that would establish the custom.

Q. Have you, as a lawyer, Mr. Heid, followed the custom of recording your water location notices within 10 days after they were posted on the claim?

A. I don't know.

Q. Do you know that at least two-thirds of the water location notices that you have had anything to do with since 1888 were filed a long time after the time prescribed by the rules?

A. They were not if they were in the Harris Mining District; I am speaking within the Harris Mining District—I didn't have to record if I located outside of the Harris Mining District.

Q. What water locations have you, within the last 10 years, made out and filed within 10 days?

A. I don't know any in the Harris Mining District.

Q. How many water locations within the last 20 years, as an attorney, have you made out and caused to be filed within 10 days in the Harris Mining District? A. I couldn't tell.

Q. Now, Mr. Heid, you testified in the case of C. M. Thorndyke and others against the Alaska Perseverance Company, didn't you? A. Yes; I did.

Q. Let me ask you a question first—when was Lewis L. Williams [1331—1181] first elected re-

(Testimony of John G. Heid.)

order of what is known as the organization of miners in the Harris Mining District?

A. The record will show that; it seems to me it was in the fall of '86 or '87.

Q. Yes; he was elected in the fall of '86, and at the time he was elected to that office he was then acting as United States Commissioner?

A. Well, he was elected after I resigned and turned the books over.

Q. To whom did you turn the books over?

A. To L. L. Williams, in compliance with the order of the Court.

Q. Where is there any such order of the Court?

A. I think you will find it of record.

Q. Do you say there is any order on record in this court ordering any books turned over to the United States Commissioner, L. L. Williams?

A. You will find it was; you will find it in that order where Judge Dawson at that time established the boundaries of the Juneau Recording District.

Q. When did Dawson cause to be organized what is known as the Juneau Recording District?

A. I don't know.

Q. It was when the first judge came here, wasn't it? A. No.

Q. Dawson was the first judge, wasn't he, after the civil law was extended to Alaska in 1884?

A. Yes, sir.

Q. He came here, and, under the law, caused a recording district to be formed, known as the Juneau Recording District?

(Testimony of John G. Heid.)

A. I think that is what you call it.

Q. Do you know where the boundary lines of the Juneau Recording [1332—1182] District so formed under Judge Dawson were with respect to the boundary lines of the old Harris Mining District.

A. I couldn't tell you—it went way down below Cape Fanshaw—about 30 miles below.

Q. Is that the Commissioner's district you are talking about now?

A. Yes, sir; it took in the Harris Mining District.

Q. It took in the Harris Mining District and a lot of other territory, didn't it? A. Oh, yes.

Q. The boundary lines were not coextensive with each other, were they—that is, I mean the boundary lines of the Harris Mining District were not the same as the boundary lines of the Juneau Recording District, were they?

A. The certificates were generally made “Located in the Harris Mining District, in the Juneau Recording District.”

Q. The recording district that was created under the law when Dawson came here, when civil government was extended to Alaska in 1884, was not the same in extent as the Harris Mining District, was it? A. No; it was greater.

Q. And included a whole lot more territory?

A. Included a lot more territory and included the Harris Mining District.

Q. Now, isn't it a fact, Mr. Heid, that Williams was elected recorder in '36, and since that time no

(Testimony of John G. Heid.)

other person has been elected recorder?

A. Yes.

Q. Who did he succeed?

A. He succeeded me; that is, I think it was for the unexpired term; they wouldn't give up so it was determined to run someone; they ran Jack Timmons and we all went up to beat Jack Timmons so as not to get the records in a muddle. [1333—1183]

Q. Now, in this minute-book, Mr. Heid, we find here at page 89 the following: "On motion the election was to continue and the polls to be kept open until 4 P. M. of this date. And at 4:15 P. M. the chairman announced the result of the election as follows: Total number of votes cast, 177; for L. L. Willims, 110; for John Timmons, 64; rejected, 3"—that is the first election you remember of Williams having been elected, isn't it? A. Yes, sir.

Q. Now, on page 91, the following takes place—the date of that is February 12, 1887, page 91, of the minute-book: "The regular annual meeting of the miners of the Harris Mining District was held on February 12, 1887, to elect a district recorder for Harris Mining District for the ensuing year. D. H. Murphy, Esquire, was chosen chairman and John G. Heid, secretary. There being no opposing candidate for district recorder, upon motion of S. Lewis the rules were suspended and Lewis L. Williams, the present incumbent, was chosen the recorder by acclamation. On motion the meeting adjourned *sine die*." You remember that meeting?

A. Yes, I do.

(Testimony of John G. Heid.)

Q. On the next page, page 92, of the same minute-book, the following appears: "The regular annual meeting of the miners of the Harris Mining District, Alaska, was held pursuant to the regular call, at the courthouse, in the Town of Juneau, Alaska, on the 11th day of February, 1888. Upon motion, J. G. Heid, was chosen chairman and John Olds, secretary. Upon motion of John Curry, Esquire, the rules were suspended and L. L. Williams, the present incumbent of the office of recorder for said Harris Mining District, was elected by acclamation, for the ensuing year, as recorder for said Harris Mining District, Alaska. Dated February 11th, 1888." Now, you said [1334—1184] you were acquainted with that book of minutes?

A. Yes, sir.

Q. There isn't any other record in that book of any other meeting, is there, Mr. Heid?

A. No, not where I have referred to; the miners would meet and elect a chairman; one chairman might be elected at one meeting and another might be elected at another meeting.

Q. Isn't that the last meeting, Mr. Heid, that was ever held?

A. There was another meeting, I will tell you here—

Q. I don't want you to tell me.

A. It isn't really what you might call a miners' meeting, because the miners' organization had practically disbanded, when you come down to it, but there was some proceedings in keeping up the

(Testimony of John G. Heid.)

organization, and the dissatisfaction came up because at this last election there was a negro they put up as a candidate against Williams; of course, he couldn't win, but at the same time to settle that dispute, the miners had called another meeting, and it was determined to simply disband; of course, they couldn't do anything else under the order of the Court.

Q. Of course, the civil government was extended and they had established a recording district?

A. Yes; it was the Juncau Recording District, including the Harris Mining District.

Q. To refresh your memory on some of these matters I will read from page 829 of your testimony that was given in the case of Thorndyke vs. The Alaska Perseverance Mining Company—"Q. Now, in 1187—I will ask you if there has ever been any meeting of the society called the Miners of the Harris Mining District, meeting and making any rules and passing any laws or doing any other work since the time you last [1335—1185] mentioned?

A. I could not remember the minutes. Q. I think the last is in 1887—February, 1888? A. That was about the only one, and that was for the purpose of keeping up the mining records, keeping all the records in the hands of the commissioner—the mining rules and regulations were only formed to govern the location and holding of mining claims prior to May 15, 1884—the passing of the Organic Act—after the Organic Act had been passed, of course, it provided that the laws of the United States in re-

(Testimony of John G. Heid.)

spect to mining would be the laws of the territory." You remember of having testified substantially to that on the trial of that case, don't you?

A. Yes, I do.

Q. Now, another question: "Q. What do you know about the custom which has been followed in regard to filing notices of mineral claims and water rights and notices of taking of any other Government land, mineral or non-mineral, has that custom been followed? A. We have always recorded in the office of the United States Commissioner, and there was no other recording office then." Did you testify to that? A. That is right; yes, sir.

Q. Now, another question: "Q. I will ask you if there has been any exact or particularly specified time in which a notice of a mining claim—either quartz or placer, or water had to be recorded before the passage of the act—was there any particular time after 1887? A. No, there was not after 1887, no specified time. The only mining that was done in Silver Bow Basin was in the summer of 1886, and I think in 1887, the entire Basin passed into the hands of the Nowells and similar large companies—200 feet was a little claim for a creek claim, and was divided into small holdings and a great many were relocated—the parties quit and finally these all drifted [1336—1186] into one thing, and for that reason you cannot call it any placer mining except what was done by the Nowell Company in the ditch."

A. I didn't say ditch—whoever reported that

(Testimony of John G. Heid.)

didn't get half of it right, but I guess he put it as near correct as he could get it.

Q. "Q. I will ask you what has been the practice in Court, whether or not the rules were relied upon in regard to the size of the claims, the time of recording the notice—have they been relied upon? A. They were in force and regarded to be the law so far as the rights in relation to mines adopted before the civil law came in, but after that they did not cut any figure."

A. I testified to that; I did, yes; for placer claims.

Q. Now, did you following that, on cross-examination by Mr. Isreal testify as follows: "Q. You don't mean to say, Mr. Heid, that the coming of the civil law abrogated the rule that you were required to record the notice of claims and water rights? A. They did not do that absolutely, but it went into disuse." Didn't you testify to that in that case?

A. I may have, yes; I may have; that answer was with reference to mining claims.

Q. Don't you know, Mr. Heid, that you testified in that case absolutely as I have read?

A. Yes; yes.

Q. And you testified just as it is written there, that the rules in regard to following them, out, whether they pertained to the recording of notices of mining claims or water locations, that you said it fell into disuse after the courts were established here? [1337—1187]

A. Well, now, if that reporter got it right—there are a number of mistakes in there; in the first place,

(Testimony of John G. Heid.)

speaking of placer mining in a ditch; what I testified to was this: That after the civil law was established and came in force here, after the Organic Law was actually passed and the civil law was extended to Alaska, that the United States' laws with respect to mining should be the law of the district, and it was on that theory that I was examined and I answered the questions.

Q. Don't you know, Mr. Heid, that the same proposition was involved in that case about these mining rules and regulations that is involved in this case, involved here now?

A. The question is, what is involved here now?

Q. The question is whether those old rules and regulations that were passed here by the miners away back in the '80's are still in force and effect in Alaska?

A. Why, with reference to placer and lode claims they are not, but with reference to water locations, there is no other law excepting the old law; there is no special legislation; you cannot point to a statute with reference to the location of water applicable to Alaska.

Q. Mr. Heid, you know that I was one of the attorneys in that case, the Thorndyke case?

A. Yes, you were.

Q. You know I stood here in court and examined you in that case? A. Yes, sir.

Q. Don't you know that Mr. Isreal put that question to you and you came back and emphatically stated that all of those old rules had been abrogated

(Testimony of John G. Heid.)

and fell into disuse since the coming of the civil law?

A. The record will show if it is correct; if I did, I want to [1338—1188] correct that, because there is no special law that you can find anywhere that will specify what you shall do to acquire water within the district of Alaska except the old miners' rules and customs.

Q. Now, here is another case, Mr. Heid; I think you testified a while ago that you testified to this question the way it is answered here: "Q. What do you know about the custom that has been followed in regard to recording notices of mineral claims and water rights and notices of taking up any other Government land, mineral or non-mineral, has that custom been followed? A. We have always recorded in the office of the United States Commissioner and there was no other recording office then.

Q. I will ask you if there has been any exact or particularly specified time in which a notice of a mining claim—either quartz or placer or water had to be recorded before the passage of the act—was there any particular time after 1887? A. No; there was not after 1887, no specified time; the only placer mining that was done in Silver Bow Basin was in the summer of 1886, and I think in 1887 the entire Basin passed into the hands of the Nowells and similar large companies—200 feet was a little claim for a creek claim, and was divided into small holdings and a great many were relocated—the parties quit and finally these all drifted into one thing, and for that reason you cannot call it any placer mining

(Testimony of John G. Heid.)

except what was done by the Nowell Company.”
You testified to that, didn’t you?

A. Yes, I guess I did, but I want to tell you right now with reference to the recording, as I said I didn’t specify as to any particular time; the row was over the Mountain lode claim, and that was the one I was interested in— [1339—1189]

Q. Let me ask you, Mr. Heid, don’t you know that in that Thorndyke case Mr. Hellenthal, who was acting for Thorndyke and the other defendants in that case— don’t you know that he set up and declared in his complaint that these miners’ rules and regulations were in force and effect and they relied upon that in the trial to defeat the water right which the Alaska Perseverance Mining Company was defending?

A. I suppose he did, because that is the only important point on which it could be tried, and he fell down because he couldn’t show compliance with the rules by the miners.

Q. Now, wait —have you read the decision of what that case turned upon?

A. No, I don’t remember it.

Q. You know that two water rights were in dispute at that time?

A. I was representing Martin; I had nothing to do with the water rights; it was a question of allowing them to use the surface ground.

Q. I know, Mr. Heid, but you were a witness in the case, weren’t you? A. Yes, I was.

Q. You have read Wickersham’s decision on that,

(Testimony of John G. Heid.)

haven't you, and you know that the miners' rules and regulations were brought into that case?

A. My recollection of Wickersham's decision was that he held it was the relating back to the initiation of the rights, and for that reason he knocked Thorndyke off the map; yes, sir.

Q. Do you remember in that case, Mr. Heid, that the Perseverance location happened to be within all the requirements of the miners' rules and regulations, if they were in force,—that it was filed within 10 days and posted—don't you remember that?

A. No; I don't remember it; if I could see the record I could [1340—1190] tell in a minute whether they claimed it or not, but as I say, that is the only way by which you could get a water right, where there is no special enactment by Congress or any by our own legislature, specifying what steps you must take in order to acquire a right to the use of water, and it is all based upon the decisions of the court, which have been based upon the old miners' rules and regulations, and that is the only law you could find in Alaska that governs the acquisition of water.

Q. What decision, Mr. Heid, do you know of that is based on the old miners' rules and regulations?

A. I didn't say any local decisions, in the Supreme Court of the United States, but in California, Nevada, Idaho and Kentucky the Supreme Court has made laws that govern the acquisition of water.

Q. Now, Mr. Heid, since I have read over the testimony which you gave in the Thorndyke case,

(Testimony of John G. Heid.)

do you want to state to the Court here that the matter of filing water location notices within 10 days has been followed in the Harris Mining District, or anywhere else?

A. I will state that as far as that is concerned I never looked that up; I don't know whether they did or did not; the record ought to decide that.

Q. You said, Mr. Heid, in that Thorndyke case that that matter of recording within 10 days had not been followed, didn't you?

A. I don't remember that my testimony extended to the point of the miners' rules themselves, which they had passed in this district, because they were of no particular force, because they were practically wiped out by the orders of the court; yet it seems to me the miners continued in the same custom.

Q. Do you want us to understand now that you didn't make these [1341—1191] answers to these questions where your attention was called here to the time of recording the water location notices and that you said no custom was ever followed?

A. I wouldn't dispute it, this was so long since; it depends on who was questioning and the way the questions were put.

Q. There never has been any mining laws in Alaska, has there, Mr. Heid, except what was extended here by Congress?

A. Yes, and the laws of the United States with respect to mining shall be the laws for Alaska.

(Testimony of John G. Heid.)

Q. The act of 1866 pertaining to locating of water and public lands in Alaska is a United States Statute, and has been extended to Alaska—you know that, don't you? A. Yes, sir.

Q. You say prior to the enactment of some legislation here that there was nothing but the United States Statute pertaining to mining claims—now, why do you say these rules and regulations of the miners in this little pamphlet, have fallen into disuse—how do they come in conflict with any United States law? A. I don't think they do.

Q. You don't think they have fallen into disuse?

A. I want to say to you that my testimony went to the quartz as well as to the water; the conflict was between the Martin lode claim, and that Martin lode claim had nothing to do with the water—they didn't claim any part of the water.

Q. Mr. Heid, wasn't this suit that I am talking about here over the Lurvey Creek water right?

(Question not answered.)

Q. Mr. Heid, you know that by the act of Congress that the mining laws of the United States were extended to Alaska, and you also know that by the act of Congress the laws pertaining to [1342—1192] the appropriation and acquisition of water were extended to Alaska; now, how is it that you understand that the rules and regulations that are included in this pamphlet or book of the miners' organization pertaining to the acquisition of mines fell into disuse, and that pertaining to water did not fall into disuse—how do you explain that?

(Testimony of John G. Heid.)

A. Well, the statute of the United States specifies how placer and quartz shall be located, but it doesn't specify how you shall acquire water, except that the prior locator has the best right and this is the form of law upon which the custom of the miners is based.

Q. I will ask you, Mr. Heid, if you didn't testify further as follows, in the case of Thorndyke against the Alaska Perseverance Mining Company: "Q. The commissioner under the Dawson order became the instrument of the miners' organization? A. He made an order turning over to Judge Williams and said under the law he was on the only lawful recorder." You testified that way in the Thorndyke case, didn't you?

A. That is what Judge Dawson did; yes.

Q. "Q. They were turned over to him? A. Yes, sir. Q. Then these miners met and elected him recorder? A. No, they elected Williams so as to have no conflict; they did not want any conflict in the records." You testified to that?

A. Yes, sir; in substance.

Q. "Q. And he was the last recorder ever elected? A. They did not elect him a mining recorder; they elected him in order to defeat the miners who did not want any interference with their records."

A. That is about it. [1343—1193].

Q. "Q. In order to defeat a large majority you elected him recorder? A. Well, it was simply for the purpose of preventing the records being separated."

A. Yes, I think that is right.

(Testimony of John G. Heid.)

Q. "Q. At the same time he was commissioner?

A. Yes. Q. What was the object? A. The effect of it was they never had any more conflicts." That was true, wasn't it?

A. I think that is right, as near as I can remember.

Q. "Q. They were continuing him as mining recorder? A. No, sir." That is true, isn't it?

A. I think that is true, yes; and I can explain why.

Q. "Q. From that day to this every mining claim or water right in the Harris Mining District that has been staked has been recorded with the United States Commissioner in conjunction with the old mining rules? A. No, sir; in conjunction with the Federal law." You answered that question that way, didn't you? A. I probably did; yes, sir.

Q. "Q. I don't want to argue with you. I realize how much you have got the advantage, but I want you to tell me if this is not a fact that the records of the mining recorder was conducted without a break in the record of lode claims. A. No, sir; there was no such a thing as a mining recorder; this was the United States Recorder—he had been recording these locations—those he recorded after the miners' recorder went out."

A. Yes, that is right, all mining claims.

Q. You testified to that?

A. I think I did; it was so long since I cannot recall everything I said.

Judge WINN.—That is all. [1344—1194]

Mr. HELLENTHAL.—That is all.

(Testimony of John G. Heid.)

The COURT.—I want to ask you some questions, Mr. Heid—have you located any water rights in the Harris Mining District? A. No.

Q. Never? A. No.

Q. Not a one? A. Not that I remember.

Q. Have any of your clients ever located any water rights in the Harris Mining District?

A. It is possible they did.

Q. Could you tell me the names of any?

A. No; I cannot, unless the record might disclose it, I could not.

Q. You don't remember the name of any client of yours who has ever located any water in the Harris Mining District? A. I cannot, I do not remember.

Q. Do you know of any person, whether a client or not, who has located water within the Harris Mining District—I will change that: Are you familiar with any water location within the Harris Mining District?

A. I know in a general way where they are, that is about all.

Q. Do you know what any particular location notice states?

A. I have never looked up the records.

Q. Do you know within what time any water location notice has been recorded—within what time after the notice was posted?

A. Now, does the Court ask me with reference to any particular one?

Q. Yes, any particular one.

(Testimony of John G. Heid.)

A. No, I cannot say with reference to that. [1345—1195].

Q. Do you know of any water location notice that has been recorded within 10 days after it was posted?

A. No, sir; in years gone by that was what they always did; now, what they have done in late years I do not know.

Q. I am asking you about your knowledge,—do you know of any water location notice that has been recorded within 10 days after it was posted?

A. No, I don't know whether I can recall that or not; I might have known of many of them, but then I cannot recall them now.

Q. Now, can you recall any water location notice that was recorded after the expiration of 10 days after it was posted? A. No.

Q. Can you recall, or do you know, of any instance in which a water right in the Harris Mining District has been held or found to be forfeited because the notice was not recorded within 10 days after it was posted?

A. I don't know of any that had not been recorded.

Q. What is your answer to that question?

A. I don't know of any.

Q. Do you know of any instance in which the question was raised as to whether a water right should be forfeited because it was not recorded within 10 days after it was posted?

A. I do not know of any litigation—

Q. I am not talking about litigation—any instance in which it was held to be forfeited either by the min-

(Testimony of John G. Heid.)

ers, or general consent, or litigation?

A. In the Harris Mining District?

Q. In the Harris Mining District.

A. No, I don't remember of any; there has been, of course, disputes over the use of water—that is, as to the quantity, [1346—1196] one claiming more than the other, but when the court speaks with reference to forfeitures and abandonments and things of that kind, the records will disclose that if there had been such a thing.

Q. Well, now, what would you say, was there in August, 1910, or was there not, a custom in the Harris Mining District by which water rights that were not recorded within 10 days after they were posted were forfeited—was there or was there not such a custom in August, 1910?

A. Oh, I wouldn't say that.

Q. You wouldn't say what?

A. That there was such a custom; I don't know that the question ever was raised; that would be four years ago, and the water rights at that time had all been taken up many years before.

The COURT.—That is all.

(WITNESS EXCUSED.)

(Whereupon court adjourned until 10 o'clock to-morrow morning.) [1347—1197]

The plaintiff, to further maintain the issues on its part, called as a witness in rebuttal HENRY STAATES, who being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Henry Staates, for Plaintiff
(In Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Henry Staates?

A. Henry Staates; yes, sir.

Q. You live in Juneau? A. Yes, sir.

Q. When did you come to Juneau, Mr. Staates?

A. In 1884.

Q. You have lived here ever since? A. I have.

Q. What has been your occupation since coming here?

A. I came here as United States Commissioner; I have been mining since.

Q. How long have you been mining?

A. The first time I mined was in '85.

Q. You were recorder prior to that time, and commissioner?

A. When I came here Colonel Dixon was recorder; then they had an election and I was elected afterwards.

Q. You succeeded Colonel Dixon as recorder for the Harris Mining District? A. Yes, sir.

Q. Do you know where the Harris Mining District is, Mr. Staates?

A. I was familiar with it; yes.

Q. Now, Mr. Staates, who succeeded you as recorder? [1348—1198]

A. I think it was John Hoyt, to the best of my recollection.

Q. Do you know who succeeded Hoyt?

(Testimony of Henry Staates.)

A. I think it was turned over to Williams, when Judge Dawson came, as my recollection serves me.

Q. Do you recall a meeting held in 1888, somewhere in the summer or fall of that year, a meeting being called at that time to consider the question of merging the offices of United States Commissioner and Mining Recorder of the Harris Mining District—a meeting of the miners?

A. Well, I remember something about a meeting of that sort; that is a long time ago to remember details.

Q. You say you remember there was such a meeting called?

A. I think Judge Dawson made an order in court to that effect, after Judge Williams came; it seems to me that he did.

Q. Were you at that meeting, Mr. Staates, or were you not? A. No, I wasn't there.

Q. Do you remember whether after that meeting was held what was done—whether future recorders were ever elected by the miners of the Harris Mining District, or whether the commissioner acted after that as recorder?

A. (Question objected to and withdrawn.)

Q. Mr. Staates, after that time, after that meeting in 1888 was called, and after it had completed its deliberations, whatever they were, who acted from that time on as the recorder for the Harris Mining District?

A. The Commissioner—the United States Commissioner.

(Testimony of Henry Staates.)

Q. That is from that time on to the present time?

A. To the best of my knowledge, I think so.

Q. I want to call your attention, Mr. Staates, to a little book marked "Book—Mining District—August, 1881, to February, 1888"—a portion of this book has been read and received in evidence; [1349—1199] do you recall that book as being one of the records of the Harris Mining District in your possession while you were recorder?

A. Yes, I recognize that; that was in the records as handed over to me by Colonel Dixon.

Q. That was turned over to you by Colonel Dixon as one of the records of the Harris Mining District?

A. Yes, sir.

Q. In this little book, Judge, are some rules and regulations relating to the appropriation of water and the acquisition of water rights, which have been read into the evidence; were they there at the time these records were turned over to you—was the book in the same condition? A. They were.

Q. Do you know, Judge Staates, whether the miners of the Harris Mining District from that time on, during the time that you have been here from 1884 or '5, up to the present time, have generally observed and followed the rules as recorded in that book as part of the records of the Harris Mining District so far as they relate to the appropriation and acquisition of water rights—do you know that they generally observed them?

A. As far as I know they complied with them.

Q. The first question is, do you know whether they

(Testimony of Henry Staates.)

generally observed it while you have been living here?

A. It was observed up to that time, the time the civil law came here.

Q. Relating to water rights, I mean—I will ask you and you may answer if you know whether the rules, so far as they relate to water rights—I am not speaking of the mining rules now, but so far as they relate to the water rights and the acquisition of water rights and the appropriation of water— [1350—1200] these rules as they are on record in the little book—have been generally observed by the miners during the years you have lived here?

A. To the best of knowledge they have.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Judge Staates, do you remember an election which was held by the miners of this so-called Harris Mining District in 1886 in which Judge Williams, who was then United States Commissioner, was elected to fill an unexpired term of John Heid, as secretary of the miners' organization?

A. I remember.

Q. Do you remember that Lewis L. Williams then was United States Commissioner also?

A. Yes, sir.

Q. Now, do you remember another election held for the election of a secretary in 1887, and Lewis L. Williams at that time acting as United States Commissioner under the civil law, and that he was again

(Testimony of Henry Staates.)

elected as recorder for the Harris Mining District—you remember such an election? A. Yes.

Q. Now, this little minute-book, Judge Staates, the last minute that is made on it, I will tell you substantially what it is—it is made on page 92 and is another election which takes place on February 11, 1888; Lewis L. Williams, who was at that time also United States Commissioner, was elected recorder for the Harris Mining District—do you remember that last election or last meeting there was held in 1888?

A. Yes; I remember there was quite a bit of talk about that. [1351—1201]

Q. Now, at that time Judge Dawson was here as United States District Judge, wasn't he?

A. Yes, sir.

Q. And you remember that the mining laws were extended to Alaska in 1884, weren't they?

A. Yes; the Organic Act.

Q. Do you remember also there was a section of the United States Statute providing for the acquisition of water on public domain—do you remember such a statute of that kind also?

A. I remember it.

Q. You know that since 1884, since the civil law went into effect, you know that there never has been any miners' meetings held by that so-called miners' organization? A. Not to my knowledge.

Q. Now, then, in this little book it shows a meeting that was held in 1888 and was held for the purpose of electing Lewis L. Williams, who was then the

(Testimony of Henry Staates.)

United States Commissioner, as recorder for the Harris Mining District—that was the last meeting then that was held by that organization that you have any remembrance of? A. It was.

Q. Did you attend that last meeting that was held in 1888?

A. My recollection is that I was there.

Q. Now, don't you know that there had been some sort of a contention among the miners at that time belonging to this organization as to whether or not they were going to submit to Judge Dawson's ruling and turn over their records to the United States Commissioner, or whether they would go ahead and keep up the organization?

A. Yes; it was discussed very thoroughly.

Q. Now, don't you remember also that all those who were in favor of keeping the organization and going ahead and electing their [1352—1202] officers were defeated, and Judge Williams kept the books as he had been keeping them before?

A. Yes, sir.

Q. The fact of the business is, Judge Staates, isn't it, that even these books and records had been turned over to Judge Williams in 1886, when he assumed the duties of recorder—do you remember that?

A. Yes.

Q. And then there was no necessity of any further turning over of the books, because in 1887 and 1888 didn't he have possession of them by reason of his being the recorder? A. Yes.

Q. Now, at that time, in 1884, or shortly there-

(Testimony of Henry Staates.)

after, there was formed what was called the Juneau Recording District, and that was formed under the law after Judge Dawson came here, wasn't it?

A. It was called the Harris Mining District.

Q. That is the old miners' organization called the Harris Mining District, but do you know of any recording district which was organized,—that is from memory, without looking at the books—when Judge Dawson came here?

A. Judge Dawson made an order extending the boundaries; that is a matter, I think, of record; the new boundaries took in Admiralty Island; the original Harris Mining District, the boundaries went down to the Taku, and then at Montana Creek it was a separate recording district; the miners here had miners' meetings, and West Wadelich was the first recorder there, and the first record ever made in the district was recorded by him.

Q. That was another district that the miners formed back in the '80's? [1353—1203]

A. Yes; before civil law came here.

Q. Then afterwards the recording district under Dawson was formed so that it embraced the Montana Recording District too, didn't it?

A. Yes; all this territory.

Q. And embraced a whole lot of other territory besides the Harris Mining District? A. Yes.

Q. Now, after that there was no further election of any recorder for what has been known as that parcel of land that formed this big district, known as the Harris Mining District—no further elections

(Testimony of Henry Staates.)

held? A. Not to my knowledge.

Q. And since that time the only recorder that they have had here for the Montana Recording District or the Harris Mining District—the only place that any papers have been filed has been in the United States Commissioner's Office, ex-officio recorder, hasn't it? A. That is my understanding.

Q. Then, don't you know, Judge, that this miners' organization fell into disuse after its disorganization in 1888, didn't it? A. I don't know.

Q. Have you made any water locations since 1888?

A. Yes; I have made quite a few.

Q. Where did you make them?

A. Made them up on McGinnis Creek and on Admiralty Island.

Q. Were they in the Harris Mining District?

A. No.

Q. They were outside of the Harris Mining District?

A. They were outside of the original Harris Mining District. [1354—1204]

Q. You remember that the Harris Mining District under the miners' organization extended from the mouth of Salmon Creek down to Taku River, and then backward on the mainland for about 15 miles, and afterwards it was changed—do you know what change was made in the boundaries afterwards?

A. When Judge Dawson extended the boundaries he went back to the British line; that is a matter of record; I could not give it in detail; took in a big scope of territory; there was some discussion about

(Testimony of Henry Staates.)

taking in Killisnoo, but they wanted to be in the Sitka District and so it was not annexed.

Q. Did you understand that this district which was formed by Judge Dawson was laid out under the law, or was it laid out under the miners who had heretofore been constituted a body, by the miners, to organize the Harris Mining District?

A. That was laid out by the order of Judge Dawson.

Q. This organization known as the Society of Miners that belonged to the Harris Mining District had nothing to do with laying out the boundaries of it at all, Judge Staates? A. I don't think so.

Q. Have you since 1888 made any locations of water at all in the Harris Mining District?

A. No.

Q. You have not? A. No.

Q. Since 1888, Judge, as to what rules people have followed in taking up water you know nothing about?

A. Well, I think they always complied with the rules—that is, recorded within 10 days; about the recording of mining claims, there was no hurry about that but the water rights they recorded [1355—1205] within 10 days.

Q. Have you examined the records to ascertain how many people lived up to that 10-day rule?

A. No.

Q. Do you know personally of your own knowledge of anybody who has filed a location notice in the Harris Mining District who has in all respects com-

(Testimony of Henry Staates.)

plied with those rules that were passed in 1881 or '82? A. In the Harris Mining District?

Q. Yes,—do you know of anyone who has complied with them? A. I don't believe I do.

Q. Now, then, not knowing then what they did in relation to filing those notices, and having no individual knowledge of anyone who has complied with them, you don't know whether or not it is being generally complied with or not, do you?

A. Well, I don't know; I never paid much attention to that.

Q. You have had no necessity, so far as you are personally concerned in making water locations in the Harris Mining District, since 1888, to observe this rule, have you? A. No, I haven't.

Q. Now, you made some outside of the Harris Mining District, didn't you? A. Yes, sir.

Q. Do you remember when you made them?

A. I made some two years ago up on McGinnis Creek.

Q. That was outside of the Harris Mining District? A. Yes, sir.

Q. Do you know how you designated those notices; whether they were in the Harris Mining District or some other district?

A. I think *there* were located in the Harris Mining District. [1356—1206]

Q. You know it has been a custom amongst all the people when they did put up a location notice of water location, whether it was in the Harris Mining District or outside of the Harris Mining District, to

(Testimony of Henry Staates.)

tack on that word, Harris Mining District, don't you? A. If they did, the records will show that.

Q. Don't you know that the miners and prospectors, as a rule, Judge Staates,—those who have come here since 1888, a large majority of them have never known where the boundary lines were of the Harris Mining District? A. I couldn't say.

Q. Well, have they put in the Harris Mining District in location notices away up around Berner's Bay and Young's Cove and far outside of the Harris Mining District—if they have, they evidently didn't know much about the boundaries, did they?

A. I wouldn't think so.

Q. Did you ever hear, Judge Staates, any prospector or any miner, since 1888 state in your presence what the boundary lines of this so-called Harris Mining District were back in the '80's?

A. I have no recollection of it.

Q. Never heard anyone—do you know what rules and regulations the miners had followed in locating placer and quartz claims since the early '80's?

A. I have had experience myself.

Q. What rules and regulations did you follow in making locations of mining claims?

A. The United States law, the act of '84.

Q. Did you or have you known of anyone that, since 1884, followed the rules and regulations that were laid down in the Harris Mining District with respect to the locating of either placer or quartz?

[1357—1207]

A. Yes, I think the placer ground that was located

(Testimony of Henry Staates.)

up in this Basin was under the Harris mining rules, in not over 20-acre lots; my impression is that they complied with the Harris mining laws.

Q. When was that, Judge Staates—in what year, do you know?

A. Well, it was along in the '80's.

Q. Some time prior to 1888?

A. I am inclined to think it was; I would not be positive in regard to that.

Q. What I was getting at, Judge Staates, after the miners had this meeting in 1888 and elected Judge Williams, I will ask you if since that time there has been any attempt made to follow the rules and regulations as were laid down by the miners' organization in taking up either quartz or placer claims?

A. No; they followed the United States law.

Q. Of your own personal knowledge, you have never known of any individual, since 1888, who, in taking up a water right or privilege, has followed the rules as so laid down by that organization called the Miners of the Harris Mining District?

A. I have not.

Q. Do you remember a clause that was contained in the rules and regulations pertaining to how you would forfeit a water location—you remember what clause the miners' rules and regulations had pertaining to this feature?

A. My impression is—you mean the Harris Mining District?

Q. Yes, sir. A. I think it was 10 days.

(Testimony of Henry Staates.)

Q. If they did not record it within 10 days they would forfeit their rights to pursue the work and put the water to use?

A. That is my impression. [1358—1208]

Q. Did you ever know of any contest arising before this so-called miners' organization concerning a forfeiture of water rights under that clause in the miners' rules?

A. If I remember right, there was some difficulty up in the Basin with Cooms, I think, and Harkrader; I am not familiar with it; I wasn't interested in it anyway.

Q. You don't know of your own personal knowledge, of any such doctrine being applied by the miners, where somebody forfeited a right by reason of not filing within 10 days, or commencing work within 20 days—you don't know of any such matter ever being settled by any miners' organization, do you?

A. I do not.

Q. And you don't remember, of your own personal knowledge, of any such difficulty having arisen since 1888, the last meeting of the miners?

A. Not to my knowledge.

Q. You have never known anyone to have forfeited a claim because they did not commence work within 20 days after the posting of the notice or that they forfeited it on the ground that they had not recorded it within 10 days, have you? A. No.

Q. How many water locations, if any, Judge Staates, do you know of having been filed prior to

(Testimony of Henry Staates.)

1888, or since 1888, in which they would designate in the notice the exact site to which the water was to be conveyed to be put to use?

A. Well, I know what locations I have made.

Q. And the locations you made were outside of the Harris Mining District and still you followed the Harris Mining District rules, did you?

A. Yes, sir.

Q. You still followed them?

A. Yes, sir. [1359—1209]

Q. To what point, do you remember, in any one of your notices did you designate the water was to be used?

(Question objected to and withdrawn.)

Q. I will ask you, Judge Staates, if you know of any location notice, of your own personal knowledge, within the Harris Mining District in which the parties followed the miners' rules and regulations in describing in particular the exact spot that the water was to be conveyed to and to be used?

A. I do not.

Q. You don't know of anyone who complied with the rules in that respect? A. No.

Q. You do know in 1888 that a portion of the miners who were in favor of keeping up the organization as an organization and keeping up the election of a recorder—that they were defeated in that project, don't you? A. Yes.

Q. And you know since that time there never has been any efforts of any kind or nature on the part of this so-called organization to carry out anything

(Testimony of Henry Staates.)

that it had originally promulgated?

A. Not that I know of.

Q. You were a member of the organization, Judge Staates, were you not—the miners of the Harris Mining District organized back in the '80's—were you a member of it?

A. Yes, I think at one meeting I was secretary.

Q. You were secretary for one term?

A. I think so.

Q. Where, if you remember, did Judge Williams keep the records of the recording district that he was recording for—that [1360—1210] is, created under Judge Dawson when he came here—where did he keep those records, and where was his office?

A. Well, I think the building is torn down now; at that time they used Mr. Willis' place, they had kind of a courthouse there, and held court there, and I think down the street there was a house fixed up later on.

Q. That is, Judge Williams, acting as United States Commissioner and ex-officio Recorder of the district formed by Judge Dawson occupied and used the place where court was held, did he not?

A. Yes.

Q. And he also, prior to 1888, kept the records of this miners' organization at the same place?

A. He did.

Q. You never were United States Commissioner and Recorder, were you? A. Yes, sir.

Q. What year were you United States Commissioner and Recorder?

(Testimony of Henry Staates.)

A. 1885—my recollection is—I came here in '84, and the next year I was elected recorder, after Colonel Dixon.

Q. What I mean, did you hold the position of United States Commissioner at any time and recorder of the Harris Mining District?

A. Yes; I was appointed United States Commissioner in 1884 by President Arthur; at that time the Commissioner was appointed by the President; the Organic Act provided for that.

Q. How long did you serve as United States Commissioner, then?

A. I think it was about a year and a half.

Q. Did Williams succeed you?

A. Yes, sir. [1361—1211]

Q. And when you were United States Commissioner you also kept the records of the organization called the Harris Mining District?

A. Yes; after I was elected recorder Colonel Dixon turned the records over to me.

Q. Now, you know, from keeping the records as recorder for the district which was formed under the law, and in keeping the records so far as the Harris Mining District was made, there was no distinction, so far as the records of the United States Commissioner was concerned, keeping any special set of books for one district and another set of books for another district? A. No; there was not.

Q. And the books you kept as United States Recorder, you simply recorded everything that was brought into you, no matter whether it was the Mon-

(Testimony of Henry Staates.)

tana Recording District or Harris Mining District, or whether it was from the country that was outside of those two mining districts?

A. As I said, in 1885 I made a location in Montana District, and West Wadelich was recorder, and they had records of their own, I think, up there; I don't know whether he ever turned them over to the commissioner or not; I couldn't say in regard to that.

Q. That was in the Montana District?

A. Yes; in the Montana District.

Q. You don't know whether the records of that mining district were turned over to the United States Commissioner or not?

A. I don't know; they were never turned over to me.

Q. What I mean is this, Judge Staates, when you were acting as United States Commissioner and ex-officio Recorder of the [1362—1212] district which was formed under the law, you didn't make any distinction in the records you kept—that is, with respect to the location of water rights that might come from the Montana Mining District or those from the Harris Mining District, or those that came from any district outside of those two districts—you made no distinction in the records?

A. None whatever.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1363—1213]

Mr. HELLENTHAL.—Your Honor, I have to offer in evidence a number of certified copies of water

(Testimony of Henry Staates.)

location notices, and these I refer to are copies of definite notices that have since been amended, and the first offer I make I will have marked exhibit No. 42 for identification. I now offer in evidence Defendant's Exhibit No. 42 for identification, which consists of a location of a water right made in the Harris Mining District by R. F. Lewis, in the year 1894; also of a certified copy of an amended notice made by the same party in November, 1897; both of these copies are certified to as correct by the United States Commissioner, keeper of the records.

(Whereupon water location notices were received in evidence and marked Plaintiff's Exhibits 42 to 61 both inclusive.)

Mr. HELLENTHAL.—I will offer in evidence the opinion of the Court upon the preliminary hearing of this matter.

(Offer rejected.) [1364—1214]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal O. M. HARRI, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of O. M. Harri, for Plaintiff (Recalled in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You have been sworn, Mr. Harri?

A. Yes, sir.

Q. You know where the Ebner dam is?

A. I do.

(Testimony of O. M. Harri.)

Q. Were you up there in the vicinity of the Ebner dam on the 4th of October, 1910?

A. I was there on October 3d.

Q. You went up there on October 3d?

A. Yes, sir.

Q. Did you see the Ebner dam on the 3d of October? A. Yes, sir.

Q. Had the Ebner dam been cut at that time?

A. It had not.

Q. Was there any flume built in the vicinity of the Ebner dam at that time?

A. Not above my tent.

Q. I am speaking of the flume? A. No.

Q. Was there any flume anywhere above or below your tent? A. No.

Q. When did you first see the Ebner dam in October? A. October 3d, 1910. [1365—1215]

Q. At that time had the Ebner dam been cut?

A. No.

Q. The water was running over the top of it?

A. No, it was running through the old gate.

Q. And into the old flume?

A. Into the creek bed.

Q. At that time had there been a grade built for the flume line between your tent and the Ebner dam? A. No.

Q. Did you stay there continuously from that time on? A. Yes, sir.

Q. For how long a period?

A. From that time to New Year's day.

Q. Where were you living? A. In the tent.

(Testimony of O. M. Harri.)

Q. On what claim?

A. I don't know the name of the claim.

Q. Do you know whether it was on a claim that was claimed by the Alaska-Juneau at the time?

A. The Ebner Gold Mining Company claimed it—the Alaska-Juneau I should say.

Q. The Alaska-Juneau Company claimed it—you know that? A. Yes.

Q. When you say the Ebner Gold Mining Company, was that a misstatement?

A. I meant the Alaska-Juneau Company.

Q. When was work commenced on that grade—when did a crew go to work there, do you know, on the Ebner flume grade?

A. It was after the 6th of October.

Q. What did they put up there at that time?

A. I am speaking of the grade above my tent, between my tent and [1366—1216] the dam.

Q. There had been grading done below your tent?

A. Yes, sir.

Q. But not between your tent and the dam?

A. No, sir.

Q. What did they do there about the 6th of October?

A. Well, from that time on they was engaged in getting the dam through and grading and building the flume.

Q. What day was it they cut the dam, do you remember? A. I don't remember the exact day.

Q. About what time?

A. It was about, I should say, the 7th or 8th.

(Testimony of O. M. Harri.)

Q. Did you see them do that? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. When did you first notice, Mr. Harri, the Ebner people working on any portion of their grade line which they afterwards put the flume over—that new flume?

A. They were working below my tent when I went up there.

Q. Below your tent—which way?

A. I mean, this way, towards town.

Q. You mean down the creek from where your tent was? A. Yes, sir.

Q. Now, don't you know, Harri, that when you were up there that they had cleared away all the brush and it could be distinctly seen from the Ebner dam just exactly where the grade of the flume, the high-line flume grade, that they expected to establish the flume upon, was—you could see that [1367—1217] plainly?

A. There was a little brush cut beyond my tent; there was no grading done—that is what I was speaking of, grading.

Q. You could distinctly see when you went up there to pitch your tent, the line that the Ebner Company intended to put its flume over, couldn't you?

A. Well, you might—there are so many claims crossing and recrossing in there, that you might call it a survey line or you might call it a flume line.

Q. You could see where it was cut out, and you

(Testimony of O. M. Harri.)

know it was cut out down below your tent, and it was cut out above your tent when you went up there on October 3d?

A. I could see lines around there; yes.

Q. You knew also the place where you pitched your tent was ground that was claimed, as you stated before, by the Ebner Company, didn't you—as a placer claim?

A. As far as my interpretation of it was, I thought they both were trying to claim the ground—I didn't know anything about the rights of it at all.

Q. Do you remember an incident up there, Harri, when our people were grading in order to make them turn the flume line around your tent that you went and laid right down across our grade so as to prevent them filling in, and so forth, and taking it along through your tent—do you remember that incident?

A. I have a slight recollection of it; yes.

Q. Now, then, don't you know, Harri, that prior to October 3d there had been an excavation made at the Ebner dam for the flume and the flume was afterwards placed in that excavation? A. No.

[1368—1218]

Q. It was not?

A. No; there was nobody around that dam doing anything when I came out there; if you will allow me, I will tell you just how things happened and how I remember.

Q. You just answer my questions—I am asking you whether or not they were excavating on the 3d of October at the dam, and whether any excavation

(Testimony of O. M. Harri.)

was made at the dam for a flume, on which a flume was afterwards put in, before you went there?

A. No, not at that time.

Q. Then, the testimony of Black, Murphy and Riordan—those witnesses are all mistaken about that, are they?

A. There is a chance for them to be; between September and October isn't very far; I was there on the ground, and one of my purposes was to look and see that that wasn't done; Mr. Kinzie came up on the 4th, and he and I walked the length of the left wing of the dam and there was no dam there at that time.

Q. You were sent up there at that time to stop the Ebner people from going ahead with their grade?

A. No.

Q. What did you throw your body across that flume grade for when they were grading it, then?

A. It was raining and it was pretty cold in that tent; I had a little stove about the size of that spittoon, and I got all wet and couldn't go out to work, and I thought if I could get thrown off by the other parties I would get to go back home and have a comfortable place to stay, and that is the object of my doing that.

Q. Now, then, you heard Mackay and Eli Black and Dan Riordan and Carlson all testify that this excavation for the flume was made there as early as September 14, and you think they are all mistaken, do you? [1369—1219]

A. Yes, sir; I heard that testimony.

(Testimony of O. M. Harri.)

Q. Do you say they are all mistaken? A. I do.

Q. Now, you heard their testimony also about there having been cut in the old Ebner dam, over where the present intake of the flume is,—that there had been a hole cut through there and that the water had been running through that into this excavation—you heard that testimony, did you? A. I did.

Q. You think they are all mistaken on that?

A. I do.

Q. You know, Harri, that Mr. Kinzie sent you up there to obstruct the Ebner Company, don't you, in building the flume and grade for its flume line and getting the water into the flume?

A. I think I have stated twice before that he had not sent me up there for that.

Q. Why did you lay yourself across the grade up there? A. I just told you a minute ago.

Q. You didn't do that because Mr. Kinzie had instructed you to do it? A. No, sir.

Q. You wanted our people to put you off up there, didn't you? A. I did.

Q. Did you do any work while you were up there in the tent on any mining claim there that the Alaska-Juneau Company claimed?

A. Across the road from the tent I cleared off possibly—

The COURT.—Now, just a minute, Judge Winn, how is that cross-examination?

Judge WINN.—I will withdraw the question; I think that is all. [1370—1220]

(Testimony of O. M. Harri.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Harri, was there any brush cut between your tent and the dam when you went up there?

A. I am not certain about brush being cut.

Q. You are not certain about whether there was brush cut or not? A. No.

Q. You know there was no excavation—no grading? A. No excavation and no grading.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1371—1221]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal R. A. KINZIE, who having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

Testimony of R. A. Kinzie, for Plaintiff (Recalled in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You have been sworn, Mr. Kinzie?

A. I have.

Q. Do you know where the Ebner dam is?

A. I do.

Q. Were you up there in the early part of the month of October, 1910? A. I was.

Q. What day in October were you there?

A. I was there the first time on October 3d.

Q. October 3d? A. Yes.

Q. How near the dam were you?

(Testimony of R. A. Kinzie.)

A. Oh, not very close to the dam on October 3d.

Q. You were close enough to see whether the dam had been cut or not at that time? A. No.

Q. When did you observe for the first time whether the dam had been cut?

A. On October 4th.

Q. How close to the dam were you that day?

A. I was on the dam. [1372—1222]

Q. Had the dam been cut at that time?

A. The dam had not been cut.

Q. You know where Harri's tent was at that time?

A. I do.

Q. Was there any grading between Harri's tent and the dam?

A. There was no grading between Harri's tent and the dam.

Q. When did you first observe any work of grading going on at that point?

A. Well, the first that I saw above Harri's tent was late in the afternoon of October 6th.

Q. October 6th? A. Yes.

Q. What was going on there then?

A. Why, the dam had been cut at that time, and there was a crew of men working, constructing boxes.

Q. The dam had been cut at that time?

A. The dam had been cut at that time.

Q. Were you present on the ground when the dam was cut? A. No, sir; I was not.

Q. You know where Harri's tent was situated?

A. I do.

Q. On what claim was that?

(Testimony of R. A. Kinzie.)

A. That was on the Russell claim.

Q. Who claimed the Russell claim?

A. The Alaska-Juneau Gold Mining Company.

Q. When was Harri sent up there?

A. On the morning of the 3d of October.

Q. What was he sent up there for, Mr. Kinzie?

A. He was sent up to represent the Alaska-Juneau Gold Mining Company and hold possession of our claims. [1373—1223]

Q. To which claims do you refer?

A. The Russell claim.

Q. What did he do up there?

A. He first pitched his tent and fixed up a place to live in and later he was engaged in doing assessment work on the Russell claim.

Q. Did he do anything in the way of fences?

A. Yes; he built two fences.

Q. When were they built?

A. They were built, I think, late in the afternoon of October 4th—that is, the upper fence was built at that time, and the lower fence, which is on the boundary between the Humboldt and the Russell, was built the next day.

Q. What were your instructions as to what he was to do—was he to use any violence to keep anybody off the claim?

A. Mr. Harri was instructed to keep off anyone from the claim, but he was particularly instructed not to use any violence; in fact, there were no fire-arms up there, no pistol or any other weapon that he could use.

(Testimony of R. A. Kinzie.)

Q. You saw to that?

A. Yes, I saw to that myself.

Q. His directions were to keep peaceable possession? A. They were.

Q. Now, do you know where the Alaska-Juneau dam was put in on the 3d of October? A. I do.

Q. Do you know at that time where the brushed out line was on the hillside indicating the position of the lower side line of the Lotta? A. I do.

Q. At what time was the first dam put in that the Alaska-Juneau [1374—1224] Company put in?

(Not answered because of objection.)

Q. Where was the dam built on the evening of October 3d—you have already testified to the construction of the dam there on the evening of October 3d, have you not?

A. I don't know whether I have in this hearing or not; I know I have previously testified to it.

Q. But anyhow, there was a dam built on the evening of October 3d?

A. The dam was completed on the evening of October 3d; the timbers and other material were put in the creek during the day of October 3d—started in the morning, the portion that I saw—it was about 10 o'clock in the morning of October 3d.

Q. How long previous to that time, if at all, had you been interfered with in your work up there—you have already testified about rolling rocks and things—when did that commence—that rock rolling?

(Testimony of R. A. Kinzie.)

A. That was some time about the middle or latter part of September.

Q. And was a continuous operation until after the 3d? A. It was; yes.

Q. Now, where was the dam built on the evening of October 3d with reference to the brushed out line of the Lotta?

A. It was built below the brushed out line—that is, down stream from the brushed out line.

Q. Was there ever any dam put in at any other place further up stream?

A. No; no dam at any other place except the position it was put in that day.

Q. The flume box that was put in that evening, you have testified [1375—1225] to putting in a flume or headgate at that time?

A. I rather think I did.

Q. Where was that flume and headgate put with reference to the brushed out line of the Lotta?

A. That was below the brushed out line of the Lotta.

Q. Did you ever put any flume or headgate above that place?

A. No; that was the only flume and headgate ever put in.

Q. Where was the dam put in on October 3d with reference to the point where the dam now is?

A. -At the same place.

Q. Where was the intake or flume and headgate put in on the night of October 3d with reference to the place where the flume and headgate now are?

(Testimony of R. A. Kinzie.)

A. In exactly the same place.

Q. Now, prior to the time that Judge Cushman's decision was rendered in the Basin case, what part of the dam extended over the line or on the Lotta Claim?

A. On the left-hand side of the creek there was an abutment or filling.

The COURT.—Right-hand side of the creek going up or going down?

A. It would be the right-hand side going down, the left-hand side going up; there was a filling in front of the portion of the dam, and a portion of this filling was above the lower side line of the Lotta as determined by Judge Cushman.

Q. The dam itself, the timber structure of the dam, where was that with reference to the lower side line of the Lotta prior to the decision?

A. The timber was always below the lower side line of the Lotta.

Q. Now, after the decision of Judge Cushman what change, if any, was made in the dam? [1376—1226]

A. The crib structure has been built on the left-hand side of the creek going up, and this is constructed by cutting hitches into the rock on either side, and logs are held in place in these hitches by vertical logs placed on the lower side; the filling of the old dam was then removed and then allowed to be carried downstream by the water, and filled in against the present left wing of the dam.

Q. After you made that change, was there any of the dam on the Lotta claim?

(Testimony of R. A. Kinzie.)

A. No; no portion at all.

Q. Are there any cross timbers that stick up under the ground on the Lotta claim?

A. No; there are no cross timbers in the dam.

Q. Now, Mr. Kinzie, do you know where the Ebner mine is? A. I do.

Q. Are you familiar with the Ebner mining property? A. I am.

Q. By whom is the Ebner mining property owned?

A. The Ebner Gold Mining Company.

Q. How long have they owned the property, do you know?

(Objection to question and question reasked.)

Q. Who owned the Ebner mining property in 1903? A. The Ebner Gold Mining Company.

Q. And from that time to the present time they have owned the Ebner mine?

A. They have, to the best of my knowledge.

Q. In 1903 did you make any examination of the Ebner mining property? A. I did.

Q. For whom and under whose directions did you make such an examination? [1377—1227]

A. The examination was made for Mr. F. W. Bradley.

Q. (By Judge WINN.) Who made the examination?

A. The examination was made by Mr. McDonald and myself for Mr. F. W. Bradley.

Q. (By Mr. HELLENTHAL.) Who was Mr. McDonald?

(Testimony of R. A. Kinzie.)

A. The General Superintendent of the Treadwell Company.

Q. You were at that time acting as Assistant Superintendent of the Alaska-Juneau Company?

A. I was.

Q. What did you find upon the property at that time in the way of a stamp-mill, a completed stamp-mill?

A. There was a 15-stamp mill located just below the lower tunnel on the Ebner property.

Q. On what claim, do you know—directing your attention to the Defendant's Exhibit "S," could you tell where that mill was located, on what claim?

A. On the Taku Lode—it is so marked here.

Q. What else did you find upon the property in the way of mill buildings?

A. There was a building constructed for a 40-stamp mill down Gold Creek, in the Canyon of Gold Creek, and situated on the Lotta claim.

Q. Where was that building with reference to the present intake of the Alaska-Juneau flume?

A. That building was above the present intake of the Alaska-Juneau flume.

Q. What was the character of the building that you found there?

A. Why, the construction and general appearance of the building, it was unmistakably a building for a stamp-mill,— for both a stamp and a concentrating mill.

Q. Both a stamp and concentrating floor were provided for [1378—1228] in that building?

(Testimony of R. A. Kinzie.)

A. They were.

Q. What did you find there in the way of an excavation?

A. There was an excavation on the lower side—that is, down-creek side of the building, that had been partially graded out at that time, and the hill-side above that grade had been cleared off at some time previously.

Q. What was the extent of that excavation?

A. The excavation was about 45 feet wide, by say 70 feet long.

Q. Was it such an excavation as would be utilized, or could be utilized in connection with the extension of the mill building that you then found upon the ground?

A. Yes, it was a necessary excavation for the extension of that building; I was informed that was what it was for.

Q. And not to serve any other purpose?

A. No; I think not.

Q. Now, Mr. Kinzie, are you familiar with the point at which the grade has been constructed since the year 1910? A. What grade?

Q. The Mackay grade, near the mouth of that new tunnel. A. Yes, I am.

Q. Are you familiar with the conditions surrounding that grade? A. I am.

Q. Are you familiar with the ground above it?

A. I am.

Q. Is that point such a point as, in your opinion

(Testimony of R. A. Kinzie.)

as an engineer, can be utilized as a site for a stamp-mill?

A. I consider it a most unsuitable place; in fact I think it would be criminal to put a mill there and allow anyone to work in it.

Q. I wish you would explain to the Court fully the conditions [1379—1229] above that point and surrounding that point, as a mill site.

A. The ground, that is, the mountain just back of the mill is all cracked and broken up; there are slides occurring at intervals of about two years—in fact, there was a slide came down last winter that cut off the point of the present grade; you can see it by standing on the grade itself; there are cracks two and three and four feet wide showing in all directions in the cliff just above the present site of the mill; that is one thing that would make it extremely dangerous for a stamp-mill to be placed there. Another reason why it is not a suitable place is because all that has been done is to dig out some loose earth from that old slide and throw this earth over the bank, and there is no provision made, nor do I think it is within reason to expect any suitable foundation for stamps to be placed on the site as graded out at the present time; it is nothing more nor less than a lot of loose dirt that came down in a recent slide.

Q. Could the grading that has been done there serve any useful purpose for legitimate mining operations? A. No; it could not.

The COURT.—Which grade do you mean?

(Testimony of R. A. Kinzie.)

Mr. HELLENTHAL.—That has been done at the portal of the tunnel.

Q. Could that grade serve any useful purpose in connection with mill operations?

A. I know of no use; over closer to the cliff they might put a building there and use it during the summer-time, but during the winter-time I think it would be exceedingly dangerous to have men working in the vicinity of Shady Bend.

(Whereupon court adjourned until 2 o'clock P. M.) [1380—1230]

AFTERNOON SESSION.

August 10, 1914, 2 P. M.

R. A. KINZIE, on the witness-stand.

Direct Examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. Mr. Kinzie, I now call your attention to a photograph marked for identification Plaintiff's Exhibit No. 62, and ask you to look at it and state if you are familiar with the matters and things shown on that photograph? A. I am.

Q. Does that photograph show where the position of the grade is made under Mr. Mackay's directions, or the Ebner Company, or the California-Nevada Copper Company, in 1910?

A. No; the grade is just off this picture, to the right.

Q. What does the picture show, Mr. Kinzie?

A. It shows the large rock slide that occurred either in 1901 or '2.

(Testimony of R. A. Kinzie.)

Q. Where is that rock slide with reference to the grade at the portal of the Ebner tunnel or the California-Nevada Copper Company tunnel?

A. It is just a short distance down the creek from the grade, near the portal of the Ebner tunnel.

Q. When did that slide occur?

A. About 1901 or '2.

Q. Is that picture a correct representation of slide? A. It is.

Mr. HELLENTHAL.—I offer that photograph in evidence.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 62.)

Q. I now call your attention to another photograph, marked for [1381—1231] identification Plaintiff's Exhibit No. 63,—are you familiar with that picture? A. I am; yes.

Q. What does that picture represent?

A. It is a photograph taken in the Jualpa Basin, showing Shady Bend and the large rock slide as shown in exhibit No. 62, that occurred in 1901 or '2.

Q. Does it also show the point where the grading for the Ebner mill was made by Mr. Mackay in 1910 or '11? A. It does.

Q. Will you mark that point on that photograph, please—write on it the words “mill grade”?

(Witness does so.)

Q. Does that photograph also show the ground immediately above the slide and above the mill grade? A. It does.

(Testimony of R. A. Kinzie.)

Q. What are the indications at that point with reference to the slide?

A. In the upper left-hand corner of the photograph it shows the cliff of rock just north of the slide which occurred in 1901, and adjoining these are the cliff and rock that I referred to in my testimony this morning.

Q. Those are the broken cliffs? A. Yes.

Q. Were they in that condition in 1910?

A. They were.

Q. Prior to August 1st? A. They were.

Q. And that shows the conditions correctly upon the ground as they are? A. It does.

Mr. HELLENTHAL.—I offer that picture in evidence. [1382—1232]

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 63.)

Q. Now, Mr. Kinzie, what is the character of the mill site on the Lotta, as to whether or not that is a good mill site, or not a good mill site?

A. I consider it a good mill site.

Q. Now, the Ebner tunnel that has been driven into the ground, the portal being a short distance above the Mackay grade, would that be a useful tunnel or a proper tunnel for use in connection with a mill located on the Lotta claim? A. It would; yes.

Q. Just as useful in connection with a mill there as it would be for a mill at Shady Bend? A. Yes.

Q. I wish you would explain that to the Court so the Court will understand it?

A. To explain it I would have to assume there was

(Testimony of R. A. Kinzie.)

a mill going in at Shady Bend, and I believe all the testimony so far is there has been an excavation made there for a mill. If there was a mill there the ore would have to be lifted to the ore bins. Now, if the mill was put in at the point originally selected for the mill site, on the Lotta claim, you would have to lift the ore from the present tunnel to get it in the mill, in a similar manner as at Shady Bend—that is, at both places you would have to lift it by putting a short upraise from the present tunnel to the Lotta mill site.

Q. It wouldn't make any practical difference where the mill was situated, as far as the tunnel was concerned?

A. No, not as far as the tunnel is concerned.

Q. Now, on the 1st of August, 1910, did you or your company or anyone that you had in your employ or that was connected with the Alaska-Juneau Company, know that Mr. Tripp had [1383—1233] posted a notice at the Ebner flume, or any other place, appropriating the water?

A. I had never heard of any such notice.

Q. When was the first time, Mr. Kinzie, that you heard of it?

A. Sometime during the month of October, I think, of 1910, was the first I heard of the Tripp notice.

Q. On the 1st day of August of thereabout had you any knowledge of any claims of Mr. Ebner or any of his associates in the Ebner Company concerning any of these properties lying below the Lotta claim?

A. No; I had not.

(Testimony of R. A. Kinzie.)

Q. When did you first get any knowledge of any of those things?

A. I think it was in either the latter part of August or September, I think, that Mr. Bent told me he was going to do some work up there; that is the first I knew that he was connected with it.

Q. When the notice was posted on the 1st of August, 1910, did you have any knowledge—

A. Just one minute, Mr. Hellenthal—I think before that time I did receive a telephone message from Mr. Bent, asking me in regard to the Harri cabin that had been built on the Oregon claim, asking me if that belonged to us and he asked me on what claim it was; I told him on the Oregon claim, and asked him why, and at that time he said he would come over to see me; I think that is the first I knew of Bent having anything to do with it.

Q. About when was that, Mr. Kinzie?

A. That must have been during the month of September some time.

Q. 1910? A. Yes, sir.

Q. Now, on the 1st of August, 1910, had you any knowledge or [1384—1234] information or did you know of any property—any other mining property—further down the creek than the lower side line of the Lotta? A. I did not.

Q. You made an examination of this property in 1903, I think you said? A. In March, 1903.

Q. At that time did you have any conversation with any officer of the Ebner Gold Mining Company with relation to the future plans of that Company?

(Testimony of R. A. Kinzie.)

A. I did; yes.

Q. With whom?

A. With Mr. B. L. Thane—he was superintendent then.

Q. Who was Mr. B. L. Thane at that time?

A. He was superintendent of the Ebner mine.

Q. That is the mining property belonging to the Ebner Gold Mining Company? A. Yes.

Q. Now, I will ask you what that conversation was?

(Not answered because of objection.)

Mr. HELLENTHAL.—I offer this testimony for the purposes of showing that in 1903 the witness made an examination of the Ebner property; that Mr. B. L. Thane, who was then superintendent in charge of the Ebner Company, explained the future plans of the Company, which consisted of building a stamp-mill on the Lotta claim at the point marked on exhibit No. 1 “New Ebner Mill and Excavation for Enlargement,” and using the water at that point, and turning the water back into the creek on the said Lotta claim; that this was one of the inducements that led the Alaska-Juneau Gold Mining Company to locate this water at the point where the Alaska-Juneau dam [1385—1235] is now—that is, with the view of taking it out of the creek after the same had been returned to the creek by the Ebner Gold Mining Company in connection with its operations.

Q. I will ask you, Mr. Kinzie, what that conversation was?

(Question not answered because of objection.)

(Testimony of R. A. Kinzie.)

Q. When were the active operations of the Ebner Company discontinued, Mr. Kinzie; how long after 1903?

A. I think they ran for, either one season or two seasons, I don't remember.

Q. After that? A. Yes.

Q. And after that active operations on the property were discontinued?

A. Something like that, yes; I won't be positive as to the exact operations of the company—it was either in 1904 or '5 that the actual operations discontinued.

Q. Had you any information in August, 1910, concerning any enlarged mill construction and mine development of the Ebner Company contemplating a large mill, other than that connected with the construction of an enlarged mill on the Lotta claim?

A. I had not.

Q. I hand you here a map that occurs on Page 81, which is entitled "Sketch Map of Gold Creek" contained in the United States Geological Report for the Juneau Gold Belt, and I will ask you if you are familiar with that map, and if that shows the general conditions as they existed on the ground in 1903 and 1910, at the time the Mulligan notice was posted?

A. I am familiar with the sketch, and also know that it does correctly show the conditions as they existed at the time.

Mr. HELLENTHAL.—I offer that map in evidence. [1386—1236]

(Whereupon said map was received in evidence and marked Plaintiff's Exhibit No. 64.)

(Testimony of R. A. Kinzie.)

Q. Mr. Kinzie, were you familiar with that map, which was offered in evidence, at the time you made that location in 1910? A. I was.

Q. And some time prior to that? A. Yes.

Q. Now, have you made a calculation as to the water requirements to furnish the power that Mr. Muir has testified to was necessary in connection with his development work—you heard Mr. Muir's testimony? A. Yes.

Q. Do you remember what the water requirements would be as measured in horse-power?

A. I believe Mr. Muir testified for 464 horse-power.

Q. 464 horse-power? A. Yes.

Q. Do you know what head they have at that compressor? A. 427 feet in my recollection.

Q. At 427 feet, Mr. Kinzie, how many miner's inches of water would be required to supply the power as measured in horse-power for their requirements, according to Mr. Muir's testimony?

A. Approximately 580 miner's inches.

Q. 580 miner's inches? A. Yes.

Q. Now, Mr. Kinzie, when did you first apply the water to use on the mill site—I am speaking now of the mill site above Gastineau Channel, the place where the milling plant is under construction?

A. By applying it to use I mean the actual using of the water, [1387—1237] was started on June—on June 22d, 1913, and this is answering your question at the place where the present stamp-mill is being constructed.

Q. That is on the mill site above Gastineau Chan-

(Testimony of R. A. Kinzie.)

nel, on the Gastineau Channel shore? A. Yes, sir.

Q. What was the use to which the water was put to at that time?

A. The water was first used for sluicing off and grading the site for the present stamp-mill—hydraulicking.

Q. What proportion of the capacity of the flume was used in that connection?

A. The full capacity of the flume was used for that purpose.

Q. Is that a use in connection with mine operations? A. Yes; a very essential use.

Q. I wish you would explain to the Court just how that water was used—all about it.

A. Before the water was used for sluicing, gates had been cut in the side of the flume above the proposed grade for the first unit of 150 stamps; the water was then turned through these gates one after another, and the dirt, rocks, stumps, and debris of all descriptions was washed down the hillside, thus exposing the rock in place so that the work of installing the foundations for the stamp-mill and the machinery contained therein could be continued; while this work was going on a pipe-line was extended from the end of the flume to the piles of debris and dirt at the foot of the cliff, and that was afterwards washed away by the use of a giant and by continuing the ground sluicing.

Q. Your mill construction, I think, you have already testified is still in process of construction—your milling plant? A. It is; yes. [1388—1238]

(Testimony of R. A. Kinzie.)

Q. And the mill that is now up, the experimental mill of 50 stamps, is on a part of the ground that was then being washed out? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. What time was it, Mr. Kinzie, in 1903 that you, in company with some one else, made an examination of this Ebner property for Mr. Bradley?

A. I think it was March.

Q. What period of time did this examination extend over?

A. Why, I think the examination took from about two to three weeks—two weeks anyway; I don't remember the exact time.

Q. Who did you say was with you?

A. Why, I had a number of men—had a crew of samplers; Mr. Tappen did the surveying.

Q. Did you make any underground, as well as surface, examinations? A. I did.

Q. And you had a number of men—what was the highest number of men you had at any one time with you, Mr. Kinzie, when you were making this examination?

A. Let me see—there were two samplers—the highest number of men would be 15 or 20—maybe not that number—maybe a little less.

Q. You would naturally, in examining that property, make reports of what you found, and sample the surface ground and the underground too, wouldn't you? A. Yes.

(Testimony of R. A. Kinzie.)

Q. Do you remember if Mr. Ebner was here at the time that examination [1389—1239] was made?

A. I think he was not.

Q. Did Mr. Bradley procure the consent of some one, or did you procure the consent of some one of the members of the Ebner Company to make this examination?

A. I understand Mr. Bradley had the examination made at the request of Mr. Ebner.

Q. You had nothing to do with that part of it, Mr. Kinzie? A. No; I had not.

Q. Now, speaking about Harri, he assisted you on the flume line and the work that was carried on at the point below where your present dam is up until the 3d day of October, 1910, didn't he?

A. From August 1st to October 3d, 1910.

Q. And then you sent him up on the place where he erected his cabin, up near the Ebner dam, on October 3d?

A. Where he pitched his tent, yes; there is no cabin built there.

Q. Now, then, you say you sent him up there to pitch the tent on some mining claim that your company claimed to own—what do you say the mining claim is? A. The Russell.

Q. That is the lode claim that was located for your company some few days before Harri went up and pitched his tent on it, was it not?

A. Well, let me see—that claim was located—

Q. Located in September, 1910—the latter part of September?

(Testimony of R. A. Kinzie.)

A. Yes, September, I think it was.

Q. Who located that claim, Mr. Kinzie?

A. I don't remember.

Q. It was located, however, for your company, wasn't it?

A. It was located for the Alaska-Juneau Company; yes. [1390—1240]

Q. You don't remember the party who located it?

A. No.

Q. At whose instigation was it located—was it yours or Mr. Bradley's?

A. I don't remember at this time, but I think it was at mine.

Q. You found what you supposed to be a vacant piece of mineral ground, then you put this location over it? A. Yes, sir.

Q. How came you to find that at that time, Mr. Kinzie—did you make an examination of plats and maps, or did you examine the records here in the Juneau recording office to ascertain whether there was a vacant piece of ground up there?

A. I think both things were done.

Q. Didn't you find on record a location on this same ground, or part of the same ground, on which you put your location?

A. I don't remember that we did; in fact, I didn't know of the placer fraction, I think, until—it was the night of October 6th.

Q. October 6th?

A. Yes; the first I knew of it Lloyd Hill told me about it.

(Testimony of R. A. Kinzie.)

Q. Now, there are two ways to find out about vacant ground—you claim you have a map or plat showing all that property up in that part of the country?

A. We have.

Q. You would either have to go on the ground to find out if there was a vacant piece of land, and observe whether there were any stakes, or you would have to go to the recorder's office and find out whether or not that ground has been located, wouldn't you?

A. Yes.

Q. You know there was a location notice on this same ground—[1391—1241] you have since ascertained that, have you not?

A. Yes; I have heard Mr. Ebner testify, I think, that since that time the location has been put of record.

Q. Oh, you think there has been a location notice of the placer claim put of record since September 10th?

A. That is my understanding—I might be wrong.

Q. Don't you know that location is in evidence here, Mr. Kinzie, and shows it has been of record for a great many years?

A. I heard Mr. Ebner testify that it had, but as to my own personal knowledge, I don't know.

Q. But it is in evidence and you have examined it, haven't you?

A. No; I haven't examined it—you are speaking now with reference to the placer claim?

Q. Yes; a placer claim over which the Russell claim is located partially. A. Yes.

(Testimony of R. A. Kinzie.)

Q. Now, then, that claim was located in 1910, and you know, as a mining man, that there was not any necessity of doing any assessment work on that claim that year, don't you—the first year you located?

A. Yes; at that time it wasn't necessary to do any assessment work.

Q. What do you mean that you put Harri up there in possession of it?

A. We had had some experience along the line of holding possession of ground; on the morning of October 3d Harri was sent up there and given instructions to prevent any one from taking possession of that ground, but not to use force of any nature, and I took it upon myself to go up and see that there were no arms that he could get to use force with.

Q. You simply told him to gently but firmly go up there and hold [1392—1242] down a quartz lode claim that you had located in September prior to the time you sent him up there? A. I did.

Q. That is, you wanted him to prevent the Ebner Gold Mining Company from building a flume line across that piece of property, didn't you, Mr. Kinzie?

A. That was one of the purposes.

Q. Now, then, Mr. Kinzie, you knew as early as the latter part of August, anyway, in 1910, that the Ebner Gold Mining Company was claiming the right to take the water out of Gold Creek up there at this old dam, and take it down and use it for some purpose, did you not?

A. The first I knew was a notice that was posted by yourself, and I think it was signed by you; I don't re-

(Testimony of R. A. Kinzie.)

member what time I learned of that, but, of course, it must have been sometime after you posted it.

Q. Don't you know that there was a suit commenced—you have offered a complaint in here showing a suit was commenced by the Ebner Company against your company in August, 1910?

A. Yes; that was a suit to enjoin us from taking water out of Gold Creek below—

Q. And this complaint that you have offered in evidence, do you know whether or not that is the complaint that covered the facts indicating to you that we were going to take that water and use it for some purpose, or have you seen this complaint?

A. Yes; I have seen the complaint, and my recollection of that complaint is that it referred solely to the work that we were doing below the new mill of the Ebner Company and on Gold Creek in the vicinity of the Lotta Claim.

Q. Well, the complaint will show for itself, Mr. Kinzie. [1393—1243] A. Naturally.

Q. Now, you didn't have any conversation with Mr. Bent in September, 1910, did you?

A. It was a day or two before he left.

Q. Don't you know that Mr. Bent left here in the early part of August?

A. No, I don't know that; that is, I don't remember it at this time, I couldn't fix the date that Mr. Bent left Juneau.

Q. Don't you know that Mr. Bent left here some time between the 5th and 10th of August, 1910?

A. No; I don't know that.

(Testimony of R. A. Kinzie.)

Q. Well, if he did leave here at that time, your conversation with him would have been in August, would it not—he didn't come back again in September?

A. I don't know whether he came back in September or not; yes, I am quite sure it was the first trip that he was here that the conversation took place.

Q. Don't you know that Mr. Bent didn't make but one trip here in 1910, Mr. Kinzie?

A. No, I don't know that.

Q. Now, don't you remember in the other case that you testified that these conversations that you had with Bent were in August?

A. If I did so testify, why, the thing was a great deal fresher in my mind then than it is now; I haven't attempted to remember what time Mr. Bent was here.

Q. Now, then, you say that on the 4th day of October, 1910, that Mackay and his party had not cut an opening in the Ebner dam about where the new flume was afterwards constructed, and now takes the water from the dam?

A. I so testified, yes. [1394—1244]

Q. You say positively, do you?

A. I say it positively, yes.

Q. That positively on the 4th day of October that there wasn't any opening in the Ebner dam near where the present intake of the new flume line is, and the water was not running out into a ditch there through that opening—you swear to that, do you?

A. I absolutely swear to that.

(Testimony of R. A. Kinzie.)

Q. You do?

A. Yes; there is no question about that.

Q. You absolutely say there was no ditch of any kind whatsoever at this particular point on October 4th, 1910?

A. I am absolutely positive about that.

Q. Then, those witnesses that testified concerning it are mistaken, are they?

A. That is the only thing I can say, yes.

Q. Now, Mr. Kinzie, what did you say that this dam that you put in on the 3d of October, 1910, in Gold Creek consisted of? A. What it consisted of?

Q. Yes.

A. Well, in the first place, starting on the left-hand bank of the stream, going upstream, we had blasted out a number of boulders that were lying next to the bank—

Q. I don't mean particularly about the blasting out of the boulders—of what logs or brush did it consist—of how many logs?

A. My impression is that it was three logs.

Q. Well, you heard the testimony of several of your witnesses that testified that there were two logs put in there—are they mistaken on that point? [1395—1245].

A. They could be very easily mistaken whether it was two, three or four logs.

Q. Do you want to swear positively that there were more than two logs there?

A. As to there being three logs, I am practically sure—yes, as to the three logs.

(Testimony of R. A. Kinzie.)

Q. Then, these witnesses of yours that put these logs in there and walked across on them to help swing around a piece of flume are mistaken, are they—there are more than two?

A. I don't know that they all testified that there was two—by referring to that photograph, I think the photograph distinctly shows three logs.

Q. You mean some photograph you took up there on the morning of the 4th? A. Yes, sir.

Q. You think the photograph shows three logs?

A. Yes.

Q. Now, you say it contains three logs—now, what else did it contain?

A. We had some driftwood, and also some lagging or logs had been run across from one bank to some rock or large boulders and put a little to the left-hand of the center of the stream going up; the logs were then hitched between these two large boulders at that point, and that formed the first section of the dam, from the left-hand bank to the rocks going upstream; in front of the lagging we cut brush along the sides of the Jualpa flume and placed the brush in front of the logs and lagging, and piled loose boulders and dirt and heavy material on top of the brush to keep it in place, and so as to turn the water from that side of the creek to the left-hand side of the creek, and also help to [1396—1246] raise the level of the water.

Q. Now, Mr. Kinzie, I think you testified this morning when Mr. Hellenthal was questioning you about the dam as it existed before Judge Cushman's

(Testimony of R. A. Kinzie.)

decision on what is known as the Basin case—now, then, isn't it a fact, Mr. Kinzie, that after Judge Cushman tried that case that you did put the piling—you took the part of the dam that is on the left-hand side of the creek as you go up the creek and you moved the logs and the dam proper several feet down the creek, and by thus doing so left kind of an apex in the center of the creek, and that that apex, at some stages of the water would cause part of the water to flow over on the left-hand side of the creek as you go up, and part of it to lead down into your intake—now, didn't you do that work after Judge Cushman's decision in that case?

A. No; the work was not done as you described, Judge.

Q. Now, that is all I want to know.

A. No; I cannot say to your whole question that that is the way that we did the work—the shape of the dam is very much the shape that you describe.

Q. Now, didn't you hear the testimony of Mr. Lindsay and Mr. Stewart, testifying that that part of the dam which was on the left-hand side of the creek as you go up was moved several feet down the creek, and that is what caused the apex—didn't you hear that testimony to that effect?

A. No; their testimony was not to that effect.

Q. You didn't hear them testify?

A. Yes; I heard them testify.

Q. You didn't hear them testify to that effect?

A. Not the way you describe it.

Q. Didn't hear Mr. Stewart testify that in his

(Testimony of R. A. Kinzie.)

judgment that part of the dam on the left-hand side of the creek [1397—1247] had, after Judge Cushman's decision been moved several feet down the creek, but he didn't give me the exact number of feet? A. Yes.

Q. Then you heard Mr. Lindsay also testify that that had been done, didn't you, and had formed an apex in the middle of the creek by the changes you made in the dam—the changes you made according to the decision of Judge Cushman.

A. Yes; that part is quite true.

Q. Now, then, Mr. Kinzie, you say it would be criminal for anyone to construct a mill upon the location at the place that Mackay has made an excavation for a mill—Mackay assisted in building a good many of the mills over at the Treadwell mines, did he not? A. He assisted; yes.

Q. Do you want to testify to the Court that your mills over there all have a foundation on bedrock?

A. The stamp batteries?

Q. Yes.

A. Absolutely so.

Q. Don't you know that there is a part of your 240-stamp mill that is not built on bedrock, but is built on ground that is much less adapted to building a mill site than the place that Mackay graded off?

A. No; it is not.

Q. You testify positively, then, Mr. Kinzie, that the foundations for your stamp-mills, all that are built over at Treadwell, are built on bedrock?

A. On bedrock.

(Testimony of R. A. Kinzie.)

Q. On bedrock absolutely? A. Yes. [1398—1248]

Q. Now, don't you know, Mr. Kinzie, that this slide that you are talking about that took place some years ago, in 1901, don't you know that slide never touched anywhere near the foundation that has been excavated by Mackay for the mill?

A. There is a portion of that slide, I think, within 50 feet of the foundation as excavated; there was a slide last winter that came over a portion of the ground he has excavated.

Q. Your are sure of that? A. Yes.

Q. Absolutely sure of that?

A. Absolutely; I have been over it a number of times for that purpose.

Q. Isn't the timber that is standing above this mill site just about as old-looking timber as is standing above your mill site over here? A. Yes; it is.

Q. There is timber there as much as probably eight or nine hundred years old? A. I wouldn't say.

Q. There is old timber there?

A. Yes; there is old timber there.

Q. There could be a slide within 50 feet of the mill and the mill be perfectly safe, couldn't there?

A. If it came within 50 feet?

Q. And the mill be perfectly safe?

A. If it didn't hit the mill, it would.

Q. You know down here in that gulch, between here and Sheep Creek you spanned a place there where there has been a slide every winter with your high-power wires, and you have put your transmis-

(Testimony of R. A. Kinzie.)

sion power lines along there, haven't you? [1399—1249] A. Yes, we got over the top of it.

Q. It depends on the topography of the ground, and what there is there to sheer it off, as to how far there is any danger from those slides?

A. That is two different things—a span of two or three wires, and a mill are two different things.

Q. I know, but the slides would carry out your towers the same as they would a mill, wouldn't they?

A. Our towers are not in the line of the slide at all.

Q. I know, but they are within a very few feet of it.

A. They are not in the line of the slide, though.

Q. Is the slide so well defined that you can tell when you are in the way of it?

A. Oh, yes; the slides are very well defined.

Q. And whenever there is some earth and the topography is such that it sheers the slide off, you can build very close to the slide and be safe, can't you?

A. Oh, yes.

Q. I will hand you this photograph, Plaintiff's Exhibit No. 62, and ask you when that photograph was taken?

A. Why, Judge, it was taken some time ago, I don't know the exact date.

Q. Don't you know from the looks of that picture, that it was taken shortly after 1901, after that slide, wasn't it, Mr. Kinzie?

A. It must have been taken a very short time after the slide.

Q. From whom did you get it?

(Testimony of R. A. Kinzie.)

A. I didn't get it; I don't know who it came from.

Q. You identified it as showing the conditions up there, at what time?

A. No particular time, as far as that slide goes, from 1901 to [1400—1250] the present time.

Q. Don't you know it is all grown over there, Mr. Kinzie, and you couldn't get a picture for several years last passed?

A. There is some grass growing there.

Q. There is nothing in this that looks like a fresh slide to you over there, is there? A. Oh, yes.

Q. So far as that is concerned, Mr. Kinzie, most of the earth on these sidehills here comes down near the surface, and there have been slides at one or another on most every one of these mountain sides?

A. You mean at the foot of the hill?

Q. Yes. A. Oh, yes; more or less.

Q. I didn't understand you, Mr. Kinzie, just what you said exhibit No. 63 was, and this rectangular figure that you have marked in red, and also have some name there—what did you intend that rectangular in red to represent?

A. That arrow at the "mill site" shows the grade of what you call the Mackay foundation—that is the approximate position as far as the photograph could show it.

Q. Have you been all over the ground on Cape Horn No. 2 lode claim, on the lower side of it—what represents the lower side line, and all over the Cape Horn claim to ascertain whether or not there are a great many places there you could build a mill?

(Testimony of R. A. Kinzie.)

A. On the Cape Horn No. 2?

Q. Yes, sir,—that is where the present mill site is graded off that you have been testifying concerning.

A. Yes; there is a possible chance on that claim to build a mill.

Q. Did you hear Mr. Tripp's testimony that the place he concluded [1401—1251] to build the mill was just a little further around the bend there than where the present grade is?

A. I think he testified that the place he had chosen was close to where the present stamp-mill is.

Q. And that is in the vicinity there, isn't it?

A. It is further up stream; yes.

Q. Now, don't you know that the big air-compressor which the Ebner Company has caused to be installed, has been installed on this foundation that was graded off by Mackay for a mill? A. I do.

Q. Do you know anything about how far they had to excavate there to find solid earth so they could construct the air-compressor?

A. To the best of my knowledge they haven't got any solid earth.

Q. What do you know about it?

A. I saw the excavation at the time it was being made—I didn't see it when it was finished.

Q. That is a pretty big air-compressor, isn't it?

A. No.

Q. Not a big one? A. No.

Q. Do you know anything about what sort of a foundation they had to put in there for it?

A. They put in a concrete foundation for it.

(Testimony of R. A. Kinzie.)

Q. Do you know whether or not they have a good substantial foundation there?

A. I think very likely they have.

Q. Did you put in any concrete foundation in the building of any of your mills across the way at Treadwell?

A. That is rather a broad question; do you mean for stamps or do you mean for compressors? [1402—1252]

Q. I mean for either one.

A. You can put a compressor on sand if you want to, but you cannot put a stamp on sand.

Q. What about the mills over there?

A. Used concrete foundations over the solid rock.

Q. You are positive about that on all your mill sites over there, are you?

A. No; we have some wooden foundations.

Q. Were you at Treadwell when those foundations were laid for all those mills? A. No; I was not.

Q. You don't know anything about what is underneath those foundations—you haven't been under there and cannot tell what it is of your own personal knowledge?

A. I have seen all of the footings of every battery at Treadwell with the exception of the foundations say for 16 stamps at the lower end of the 240 mill.

Q. You haven't seen that?

A. No; that is about 25 or 30 feet down under the ground.

Q. You have now no personal knowledge of what was found underneath the foundations that they have

(Testimony of R. A. Kinzie.)

constructed over there?

A. You mean that I actually saw?

Q. Yes.

A. No—that is, in regard to this 16 stamps at the end of the 240 mill; I have seen every other foundation on the island.

Q. Now, then, Mr. Kinzie, when you say to Mr. Hellenthal that you didn't know on August 1st, 1910, of the Ebner Gold Mining Company owning any property lower down the creek than the lower side line of the Lotta claim—you testified to that, didn't you? A. Yes.

Q. Now, aren't you mistaken about that, Mr. Kinzie? [1403—1253] A. No.

Q. Didn't you, when you were patenting the Colorado lode claim, deed to the Ebner Company all of that portion that is included on Defendant's Exhibit "S" here, of the Colorado that was in conflict with the Parish No. 1 claim? A. We did.

Q. Is that lower down than the side line of the Lotta? A. Yes.

Q. And it is right near where you have constructed your air-compressor at Snow Slide gulch, isn't it?

A. Oh, no; it is away up on the hillside from that.

Q. What is the length of the Colorado claim?

A. The Colorado claim is about—the way it is cut off now—about 1200 and some odd feet.

Q. How much of the Colorado is below the portion which your company deeded to the Ebner Company, approximately?

A. About 450 feet according to this map.

(Testimony of R. A. Kinzie.)

Q. You say your air-compressor and new tunnel are about 450 feet below the lower side line of the Parish No. 1 lode claim?

A. Well, I wouldn't say that; I would say that when that compromise agreement was made, they threatened to adverse us and give us trouble at the time we went to patent, and that was the compromise under which we deeded to them a portion of the Colorado claim that they then claimed was a part of their Parish claim.

Q. Then, when you verified the reply in this case and said that the Ebner Company did not own any property down the creek any lower down than the Lotta claim, you were mistaken about that—this part that the company deeded is lower down the creek, isn't it? A. Yes.

Q. Then, if you have stated in your reply that the Ebner Company [1404—1254] didn't own anything lower down the creek than the Lotta, you are mistaken, aren't you?

A. That particular piece of ground I didn't have in mind; I didn't think of that at the time; I had overlooked that piece, and that was omitted from that reply.

Q. Now, then, you were talking about there being a good mill site, and so forth, on the Lotta lode claim; in 1910 you caused to be filed over this Lotta lode claim two mining claims, one called the Canyon and one called the Oregon, didn't you? A. Yes, sir.

Q. And those two claims took up most all of the

(Testimony of R. A. Kinzie.)

Lotta lode claim as it was established by Judge Cushman, didn't it?

A. As established by Judge Cushman?

Q. Yes, sir.

A. Yes; I think they did—that is, the full claim was covered; yes.

Q. Then, if the Ebner Company had a good mill site on the Lotta lode claim to build a mill on your company was trying to wrest from them most all of the Lotta claim in 1910, weren't you? A. No.

Q. You were not? A. No.

Q. You were claiming it by two locations, weren't you?

A. When you make a location, you always run it out, even if you are locating a fraction, you run it out full length.

Q. In the trial of that case didn't you people try to cut the Lotta claim clear out of existence, and claim you owned that ground by reason of your two claims, the Oregon and the Canyon claim—didn't you make that claim, and didn't Cushman pass upon that?

A. No; I think not; we never claimed the Lotta claim by any means. [1405—1255]

Q. Didn't you put in an exhibit that has been offered in this case, and don't you know that your Canyon lode claim and your Oregon lode claim that you were claiming to own in that suit, and claiming the ground under them, covered almost all of the Lotta lode claim? A. I think they did.

Q. Now, Mr. Kinzie, when you were up there ex-

(Testimony of R. A. Kinzie.)

amining that property and making surface ground examinations and underground examinations, in the expectation of Mr. Bradley purchasing that property, didn't you then in 1903 when you were making your examination, become perfectly well acquainted with the boundary lines of every one of those claims up there? A. No.

Q. Then do you want to say when you go as an expert to examine a piece of property that you don't examine the boundary and surface lines of that property as well as you do the workings underground?

A. The purpose of that examination was a two-fold purpose.

Q. Didn't you testify that your examination was for the purpose of Mr. Bradley buying it?

A. That is what it was made for.

Q. Now, do you want to state to the Court that you didn't examine that property—the surface ground as well as the underground? A. Yes.

Q. You didn't do it? A. No; I didn't do it.

Q. I believe you say it is not customary in the examination of property for a prospective buyer to examine the surface ground as well as the underground workings before you make up a report? [1406—1256] A. Oh, yes.

Q. You made up a report on this property, didn't you? A. I did.

Q. Now, you spoke something about that it might be practical for the Ebner Company to go down on the Lotta lode claim and mine their property through their new tunnel which they have driven?

(Testimony of R. A. Kinzie.)

A. I think that is what the tunnel is driven for, Judge.

Q. You think that the tunnel that the Ebner people have driven, commencing at Shady Bend, in your opinion was driven for the purpose of mining the property through a mill or by means of a mill upon the Lotta claim? A. No, no.

Q. I thought you said so. A. No.

Q. Is it as practical to work the property of the Ebner Company with a mill located on the Lotta claim as it would be with a mill located down near Shady Bend? A. Positively more so.

Q. You think in your opinion that it would be positively more so? A. Oh, yes.

Q. And you could utilize this new tunnel just as well in the mining of the property with a mill on the Lotta lode claim as you could with a mill down this side of the mouth of the tunnel, could you?

A. Considering the present conditions, yes.

Q. Do you know how far they would have to raise the ore if the mill was put on the Lotta lode claim?

A. Yes.

Q. How far? [1407—1257]

A. About 160 feet.

Q. They would have to lift it about 160 feet?

A. No; they would have to lift it a little more than 160 feet—might have to lift it 200 feet.

Q. Lift it 200 feet, providing the ore is taken out on what level, or from what place?

A. Any place that the tunnel tapped.

Q. Any place that the tunnel tapped?

(Testimony of R. A. Kinzie.)

A. Yes.

Q. But you don't mean they would not have to lift it a great deal further if they sunk shafts down from the bottom of this tunnel and were working below the level of the tunnel, do you, supposing they did work below the level of the tunnel? A. Yes.

Q. Then they would have still further to raise it, would they not?

A. The further they go down the further they would have to hoist it; yes.

Q. According to your estimate, if they worked this property from the present new tunnel in a mill at Shady Bend, how much would they have to lift the ore then, providing they didn't go any further down than the level of the bottom of the new tunnel?

A. If you make that assumption, Judge—there is no reason to expect that they will ever put a mill on that foundation—and I am quite sure they never expect to put a mill there; but assuming that they did, they would have to lift it about 40 or 50 feet.

Q. What head of water would there be if a mill was constructed on the Lotta claim? [1408—1258]

A. 240 some feet.

Q. 240 feet? A. Yes, I think so.

Q. There would be that much of a head of water if a mill was constructed on the Lotta lode claim?

A. Yes.

Q. How much head would there be, if a mill was constructed down near the new tunnel?

A. 450 feet, I believe.

(Testimony of R. A. Kinzie.)

Q. That makes quite a little difference in the efficiency of the power, does it not, Mr. Kinzie?

A. It does; yes.

Q. Now, Mr. Kinzie, prior to August 1st, 1910, how long had you been superintendent of the Alaska-Juneau property and this little mill built in the basin up above the old Ebner mill? A. August what?

Q. Prior to August 1st, 1910?

A. About 6 years.

Q. Did you personally look after the superintendency of that property during that time?

A. I did; yes.

Q. About how many trips did you make up there a week?

A. Oh, during the season I suppose I would average two trips a week.

Q. That would be something—about how many times a year would you say that you went up there?

A. That was only during the working season.

Q. During what months?

A. That would be from some time in June to some time in October.

Q. And in going up to this property you passed right along the Basin road near the old Ebner dam, and passed by all of the [1409—1259] Ebner's old workings, didn't you?

A. Well, I always went up the main wagon-road.

Q. That is what I say—it is called the Basin road?

A. Yes.

Q. Which is on the left-hand side of the creek as you go up? A. Yes.

(Testimony of R. A. Kinzie.)

Q. There is only one road up there, isn't there?

A. There is only one road.

Q. And you passed right up to the Ebner dam on all those trips that you made up there?

A. The nearest you would pass to the Ebner dam would be 200 or 250 feet, as you pass through the hollow there.

Q. You know that dam can be seen from a great many points along this road, don't you?

A. It can only be seen from one point.

Q. Did you see a photograph that we offered in evidence, Mr. Kinzie?

A. No, I will change it—it can be seen from two points.

Q. Don't you know, Mr. Kinzie, that there is a place along there for a thousand feet or more that you can look down and see the Ebner dam?

A. That is one of the points I have reference to; the road now goes around the hill, it used to go over the hill; you can see it from that point; there is nowhere you can see it for a distance of a thousand feet, not more than 100 feet.

Q. You don't think it is more than 100 feet?

A. I don't think so.

Q. You wouldn't be sure of that—you haven't made any special observation of that, have you?

A. Yes; I was up there with that same question in view about three weeks ago. [1410—1260]

Q. You were?

A. Yes; I think it was about three weeks ago yesterday.

(Testimony of R. A. Kinzie.)

Q. This sketch map here of plaintiff's which you have referred to as exhibit No. 64, what did you say that was taken from?

A. From bulletin No. 287 of U. S. Geological Survey Reports on the Juneau Gold Belt.

Q. Do you know what year that report came out?

A. I think it was 1905.

Q. Those reports are made up by whom, Mr. Kinzie? A. United States Government.

Q. Well, you don't know that the Ebner Gold Mining Company had anything to do with making this map or plat, do you, Mr. Kinzie?

A. The Ebner Gold Mining Company had anything to do with making that plat?

Q. Yes. A. No.

Q. And any data that would be placed on it would be placed by the parties who made it up, and the Ebner Gold Mining Company would have nothing to do with that? A. I don't know, I am sure.

Q. You claim, Mr. Kinzie, that you got the water through your flume line down to a place approximately where you have constructed your mill near the beach here at Juneau on the 22d day of June, 1913?

A. Used there hydraulicking off the hillside on June 22d, 1913.

Q. I simply asked you the question if you got it down to a point approximately where your mill is built near Juneau on June 22d, 1913,—did you say 22d or 27th?

A. The 22d of June. [1411—1261]

(Testimony of R. A. Kinzie.)

Q. Of what year? A. 1913.

Q. You cut out some gate-ways in your flume and let the water run down over the hill from those places until it entered Gastineau Channel?

A. Yes; ground sluicing.

Q. In ground sluicing do you usually commence on top of the hill or down near the bottom of the hill, as a rule? A. Always start at the top.

Q. How long did you let the water run in that way, Mr. Kinzie, before you put a giant on?

A. A giant was put on there—I won't be positive, Judge, either the 29th or 30th the first giant was put on.

Q. The 29th or 30th of what?

A. June—I am not positive of that date.

Q. Don't you know that you didn't have any in there for a long time after that, and that the water ran down the hillside there into Gastineau Channel?

A. No; I don't know that; we had a 4-inch giant brought over from Treadwell and then a 6-inch and 8-inch giant.

Q. You don't know what date you put that giant to work?

A. No; I don't know at this time; I haven't got any data on that.

Q. You hadn't at that time constructed any of the mill buildings? A. The mill building itself?

Q. Yes.

A. No; we hadn't; we had cut out and started the grading on our crusher house, and the work was then

(Testimony of R. A. Kinzie.)

in progress at both places and had been prior to that time.

Q. Then, if it is claimed in your pleadings in this case that you didn't get your water down to the present mill site until July 13th that is a mistake in your pleadings, is it? [1412—1262]

A. Certainly it is a mistake.

Q. You say now you got in there in June?

A. Yes.

Q. And if you say in your pleadings that it was in July or August, that is a mistake there, isn't it?

A. Yes; it is a mistake.

Q. And you verified all the pleadings in this case, didn't you? A. I did.

Q. Now, Mr. Kinzie, going back to the question of the air-compressor—you built your air-compressor and air-compressor building at Snow Slide gulch right near to where there is annually a snow slide down the gulch, didn't you?

A. Which compressor do you mean now?

Q. At Snow Slide gulch—you didn't build but one at Snow Slide gulch, did you?

A. Yes; we built two.

Q. You mean you built another besides the one that is there now? A. Yes.

Q. When did you put that in?

A. We put that in prior to November 17th, 1910.

Q. Is this one that you have installed there now installed at the same place? A. No; it is not.

Q. What is the difference between the two?

A. The original one was covered up by a snow

(Testimony of R. A. Kinzie.)

slide, and our present compressor is farther down the creek and in a protected position behind the bank.

Q. And that standing in a snow slide place, where the snow annually slides down there in great quantities, you installed your first air-compressor down there where it was partially taken out or covered up by a snow slide, didn't you? [1413—1263]

A. We did.

Q. That wouldn't be a very safe place for men to work would it? A. It wasn't no.

Q. Have you ever had any snow slides up there since you built this second one? A. Every winter.

Q. You haven't had any snow slides that interfered with this one you have on the gronud now, have you? A. No.

Q. Now, then, Mr. Kinzie, you know it would not be practical to build and operate a mill upon the Lotta claim, don't you?

A. I know to the contrary, it would be practical.

Q. What would you figure on doing with the tailings?

A. The tailings would have to be flumed out; of course at the present time if you owned the basin below you wouldn't have to do that; if you owned the basin below you could allow them to flow into the creek.

Q. If they came down and entered into your flume, then the only way you think that a mill could be built on the Lotta claim and operated would be by building a flume and sluicing the tailings on beyond your intake? A. Oh, no; oh, no.

(Testimony of R. A. Kinzie.)

Q. What would you do with them?

A. Dump them into the creek.

Q. If we dumped them into the creek they would enter your flume, wouldn't they?

A. That would be up to us.

Q. It would be up to you pretty strong, wouldn't it?

A. Why, yes; I guess it would be.

Q. You know you cannot dump them into the creek—it would cover [1414—1264] up your dam wouldn't it?

A. No; they would go over the dam; if they were dammed in at the intake of our flume, of course it would give us a great deal of trouble.

Q. Now, in figuring out the number of horse-power that you thought the Ebner Company would need down at these new workings, how many horse-power did you say that they would need, and under what conditions would they need it?

A. In answering your question I believe I have made a mistake in figuring the horse-power; I figured at 80 per cent efficiency, but figuring the real horse-power at 80 per cent—

Q. (By Mr. HELLENTHAL.) Do you mean horse-power, Mr. Kinzie, or water-power?

A. Figuring the water at 80 per cent efficiency, it would require 483 miner's inches of water to develop the horse-power that Mr. Muir said it was necessary for them to have.

Q. You give miner's inches of water instead of horse-power?

A. I took Mr. Muir's statement of 464 horse-power for that.

(Testimony of R. A. Kinzie.)

Q. And 464 horse-power at that head would be equal to—

A. At 80 per cent efficiency, 483 miner's inches of water.

Q. You mean at 80 per cent efficiency you make a discount of 20 per cent? A. Yes.

Q. What do you do that for?

A. That is to account for whatever loss there is in efficiency in your water wheels and pipe-line.

Q. That depends on how long you carry it through your pipe-line, doesn't it?

A. That is the usual loss, 20 per cent; figuring at 80 per cent efficiency you could get you 464 horse-power that Mr. Muir stated would be required with 483 miner's inches of water. [1415—1265]

Q. You figure that vertically, don't you?

A. No; it would only take 464-6/10 vertically.

Q. Now, supposing one person is using a pipe that is twice as long as another, does the friction have something to do with the efficiency of the power that is absolutely applied to your machinery?

A. It has nothing to do with it with the exception as to the diameter of the pipe.

Q. Well, the diameter of the pipe of course—in a large pipe there would be less friction, wouldn't there? A. Yes.

Q. And a smaller one more? A. Yes.

Q. What size pipe did you figure on using?

A. The proper size.

Q. What is the proper size?

A. I haven't figured it out; I think we have at

(Testimony of R. A. Kinzie.)

least 18-inch pipe, and we can easily get that efficiency through that pipe.

Q. Do you know what length of pipe—how long they have to pipe it?

A. Very short pipe—not over 500 feet of pipe.

Q. Well, is there any loss of efficiency there?

A. Yes.

Q. But figuring it all up together you figured that it would not amount to more than 20 per cent?

A. Yes; that is all the loss there should be.

Q. If it would be installed in the most modern, approved way? A. No; the ordinary way.

Q. Since what date? A. For the last 20 years.

Q. That is the basis you have figured on?
[1416—1266] A. Yes.

Q. How much water do you calculate it would take to run the kind of fan Mr. Muir testified concerning if they had about five thousand feet of pipe-line?

A. He didn't testify to any fan; he simply said his fan took so many horse-power, and I took his word for that.

Q. Didn't he testify that this water was piped into the tunnel?

A. No; he testified that two fans took 34 horse-power—is what he testified to.

Q. And you took his figures for that? A. I did.

Q. You didn't make any discount in the efficiency that there would be at the point of application by reason of any length of pipe, but simply took his word for it?

A. He didn't say anything about any length of

(Testimony of R. A. Kinzie.)

pipe; he simply said he had two fans installed that took so many horse-power.

Q. This matter of tailings—there is always more or less trouble in handling those, is there not, Mr. Kinzie? A. Tailings in the water?

Q. You have experienced some trouble down here at your mill, haven't you, in handling your tailings?

A. Yes; we have to wash our tailings.

Q. Filling in pretty rapidly down there isn't it?

A. Not at the present time; no; we are keeping it pretty well away since we have extended our flume out.

Q. It all goes into the Gastineau Channel, doesn't it?

A. Yes; but we are depositing it at the present time—most of it—under our wharf.

Q. But with a mill down there with the capacity that you say you are going to build there will be quite a job handling your tailings, won't there?

A. I think not. [1417—1267]

Q. You have had trouble over at Treadwell—made a whole lot of earth, haven't you?

A. We have been operating there for over 30 years, Judge.

Q. Well, your capacity here is going to be double or treble your capacity there, isn't that your testimony? A. Yes.

Q. And you would have double or treble the amount of tailings, wouldn't you? A. We would.

Q. Where did you see any excavation,—I don't remember, Mr. Kinzie, whether you testified con-

(Testimony of R. A. Kinzie.)

cerning it or not, but I believe you did, about some excavation up there around this building that we have referred to as the old compressor building on the Ebner property, and you have referred to it as the new mill—where did you ascertain that there was other grading done there?

A. I have been there while they were grading it—I have been on the ground while the men were at work; it is on the lower side of the mill building looking down stream.

Q. You don't know what that was graded off for, do you?

A. I know what they told me it was graded off for.

Q. What Ebner told you?

A. Yes; I think I had a conversation with Ebner the following year in regard to that; but I know at the time I was up there making the examination of the mine I went over that thing with Mr. Thane, who was then superintendent of the mine.

Q. But I am talking about any conversation you had with officials, president, and so forth—where was Ebner when you had this conversation with him?

A. I don't remember exactly, but my impression at this time is there was a little place right next to his house—the Ebner [1418—1268] Company used to have a little place there.

Q. Down town?

A. Yes; I am not positive as to that at this time.

Q. You are not positive of having any conversation with Ebner about it?

(Testimony of R. A. Kinzie.)

A. Yes; my recollection is quite clear on the conversation part, but as to the place and time I don't remember definitely now.

Q. Don't remember what year it was?

A. No; I don't.

Q. What is there in that building up there, Mr. Kinzie?

A. At the present time?

Q. Yes. A. Nothing.

Q. If you had any conversation with Mr. Ebner it was prior to 1910, wasn't it?

A. Yes; it was prior to 1910.

Q. A long time prior wasn't it?

A. About four or five years.

Q. Mr. Ebner wasn't up here or had nothing to do with the running of that property up there prior to 1910, did he?

A. Oh, Mr. Ebner was here off and on almost continually, I think, up to 1910.

Q. When did you testify he quit working up there in running the old Ebner mill?

A. When Mr. Ebner quit?

Q. Yes.

A. I understood he owned the property until he transferred it, and I so testified.

Q. But when did you say he quit operating the old mill?

A. About 1904 or '5; I am not sure.

[1419—1269]

Q. Prior to that time you had this conversation with him, did you?

A. No; it was during that time; it might have been just about 1904.

(Testimony of R. A. Kinzie.)

Q. You looked around and had a great many places in view, didn't you Mr. Kinzie, to build a mill before you built a mill down here on this site?

A. The exact spot?

Q. Yes. A. Yes; we did.

Q. You heard Mr. Bradley's testimony that they had some idea sometime of building a mill up in the Basin somewhere near your Gold Creek tunnel, didn't you?

A. Yes; we did,—not near the mouth of the Gold Creek tunnel.

Q. But up in that vicinity somewhere?

A. No; it was lower down the stream.

Q. How much lower down?

A. It was at this end of the Jualpa Basin; I don't know that he testified to it, though.

Q. You did have some idea of that, didn't you—it was a plan you talked over? A. Yes, sir.

Q. Then you commenced a tunnel out through town towards Sheep Creek at one time, didn't you?

A. Yes, sir.

Judge WINN.—That is all. [1420—1270]

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Kinzie, the slides concerning which you have been testifying up at the Mackay grade, what is the character of that slide, whether it is a rock slide or a snow slide? A. Rock slide.

Q. What character of slides does the danger consist in, from rock slides or snow slides?

A. At Shady Bend it would be rock slides.

(Testimony of R. A. Kinzie.)

Q. Now, Judge Winn has asked you some questions about high tension power lines along the beach—what is the character of the slides there?

A. Snow slides.

Q. What is the difference between a rock slide and a snow slide, with reference to the slide having a well defined course?

A. The snow slides have a well defined channel that they follow gullies; a rock slide will come from any point, and usually from the places where there hasn't been a slide in a great many years; and the danger that exists at Shady Bend is from the loose material and rock that is in the cliff immediately above the area called the Mackay grade.

Q. The danger there, you say, is from snow slides or from rock slides? A. Rock slides.

Mr. HELLENTHAL.—That is all.

Judge WINN.—That is all.

(Questions by the COURT.)

Q. Mr. Kinzie, I want to ask you a question or two—I don't know whether the point was covered here or at the preliminary hearing. When Gold Creek is at the normal flow there is enough water in it to fill your flume as it now exists, and to fill [1421—1271] the Ebner flume as it exists—that is, with that extra board that they have, isn't there?

A. There is—that is, during the summer months.

Q. Now, how many months in the year is there enough water in Gold Creek for you both, taking the full capacities of your flumes as now constructed—what months in the year is there sufficient water for

(Testimony of R. A. Kinzie.)

both? A. Five months.

Q. What five months are they?

A. With starting say the latter part of April, May, June, July, August and September and part of October; some years there would be a little more than five months.

Q. Now, there is a certain period of the year when there isn't water in Gold Creek for anybody, isn't there? A. Yes.

Q. What months in the year are they?

A. That varies from year to year, but you can usually count on February having a minimum flow in Gold Creek.

Q. In the month of February it is frozen over and very little water in it?

A. Practically no water at all.

Q. So the only months that this question is material, as to who has the first right to the water of Gold Creek would be March and the first part of April and the last part of October up to February?

A. Yes; of course during the month of February there really would be enough in the normal years to use for jacket water.

The COURT.—That is all.

(WITNESS EXCUSED.) [1422—1272]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal RUSSELL CASEY, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Russell Casey, for Plaintiff (Recalled
in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You have been sworn, Mr. Casey?

A. Yes, sir.

Q. You know where the Ebner dam is.

A. Yes, sir.

Q. Were you up there in October, 1910?

A. Yes, sir.

Q. Was Harri there when you came?

A. His tent was there, I don't know if he was there.

Q. When you first went up there had there been any flume built between Harri's tent and the dam?

A. No, sir.

Q. Had there been any grading done?

A. Not that I saw.

Q. Had the Ebner dam been cut?

A. No, sir; it was cut the 6th of October.

Q. Were you there on the 6th of October?

A. Yes, sir.

Q. What happened there on the 6th of October?

A. Why, they put in the headgate and took lumber from the road there, if I remember right to the Ebner dam and put in a box—I believe two or three boxes—and cut the dam and let the water through to the left-hand side going down the creek—they put a hole in the first box to let the water down the [1423—1273] creek.

Q. Did you see them cut the dam? A. Yes, sir.

Q. You were present when that occurred?

(Testimony of Russell Casey.)

A. Yes, sir.

Q. Did you see Mr. Lindsay?

A. I walked up with him.

Mr. HELLENTHAL.—That's all.

Cross-examination.

(By Judge WINN.)

Q. What were you doing up there on October 6th?

A. Packing lumber.

Q. Who were you packing lumber for?

A. Packing for Mackay or the California-Nevada Company.

Q. Where were you packing lumber from?

A. From the flat over to the dam.

Q. What flat do you mean?

A. The Ebner flat; the teams dumped the lumber on the flat and we packed it up to the dam.

Q. On the 6th of October?

A. I guess it was the 6th of October.

Q. Don't you know that the lumber that was taken from the old mill was put up there to build that box?

A. I don't know any such thing.

Q. You don't know anything about that, do you?

A. I know the lumber I packed was from the flat.

Q. You say you packed lumber on the 6th day of October?

A. Yes; I was sent up there by Mackay to pack lumber.

Q. And you packed new lumber? A. Yes, sir.

[1424—1274]

Q. You packed new lumber on the 6th day of October? A. Yes, sir.

(Testimony of Russell Casey.)

Q. Don't you know that the first box that was put in up there was made from old lumber that came out of the old mill?

A. I don't know any such thing; no, it was not old lumber.

Q. And you were sent up there to pack lumber on the 6th of October? A. Yes.

Q. And you went up there with Lindsay?

A. Yes.

Q. Lindsay was working for the Alaska-Juneau Company, wasn't he? A. I suppose he was.

Q. How came you to go up there with him?

A. I met him on the road.

Q. Don't you know that you never did any work for Mackay in any way in the world except a little place where they were grading off the mill site?

A. No, sir.

Q. Didn't you work there all the time you were up there for Mackay? A. No, sir.

Q. Who hired you? A. Mackay.

Q. What did he say to you?

A. He told me to go up and help put in the flume; I don't know that Mackay—

Q. You said awhile ago that you were hired by Mackay? A. I was hired by Mackay.

Q. Give me the name of the man that sent you up there?

A. I was sent there by a man by the name of Patton.

Q. Who is Patton? A. I don't know who he is.

[1425—1275]

(Testimony of Russell Casey.)

Q. Ever seen him since?

A. Yes; he is some relation to—

Q. You won't say whether it was Mackay or Patton that gave you this order?

A. I wouldn't say; Fred Radel went up there either just before or shortly after.

Q. Who was up there that was cutting any place in the dam on the 6th day of October?

A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Do you know any of these witnesses that testified on the witness-stand? A. I know them all.

Q. Riordan? A. Yes, sir.

Q. Carlson? A. Yes, sir.

Q. Al Black? A. Yes, sir.

Q. Was it any of those men?

A. I don't remember; I don't think Al Black was there.

Q. You don't remember who it was on the 6th that was doing this work?

A. There were 20 or 30 men; they wanted to get the box in.

Q. You don't remember who the men were that did the work on the 6th of October?

A. No, I don't remember; I remember seeing—

Q. Did you hear Riordan's testimony, and did you hear Carlson's testimony and did you hear Al Black's testimony—you have been here in the courthouse all the time, haven't you? [1426—1276]

A. Yes; some of the time; I don't care what they said.

(Testimony of Russell Casey.)

Q. Don't you know when they went over there to put in any part of the box or flume, that Al Black had been there prior to the time the box was put in, and had cut out a portion of the dam so that the water could run into the excavation?

A. I don't know it, no.

Q. What I understand you to say is this, that when you went up there on the 6th of October, somebody was working there putting in a headgate at the dam?

A. I said I was up there when they cut the dam—I guess it was the 6th; the dam had never been cut, or any headgate put in there; I was helping to pack lumber, and they put in the headgate while I was there.

Q. Don't you know that Mackay caused a headgate to be put in, and that it was some time about the 3d or 4th of October that this Mackay headgate was put in there?

A. I don't know anything of the kind.

Q. How do you fix this day as the 6th day of October?

A. That is the day they put the box in.

Q. How do you fix that day? A. My notes.

Q. When did you make any notes?

A. I didn't make any notes.

Q. What notes are you talking about then?

A. Mr. Lindsay's notes.

Q. You have refreshed your memory from looking at his notes and talking them over with Mr. Lindsay?

A. Not talking to Lindsay; looking at his field-notes.

(Testimony of Russell Casey.)

Q. Did you see Lindsay when he made those notes?

A. No.

Q. Then Lindsay didn't make those notes while you were with him? [1427—1277]

A. He made the notes that night, he told me.

Q. You said just now you didn't talk about it with him?

A. Not on the 6th—I have talked to him since we have been in the courthouse.

Q. And Lindsay told you he had a book with this in it, and that it was on the 6th, and you looked at the notes?

A. Lindsay read the notes here.

Q. Read them to you?

A. No, he didn't; he read them to you.

Q. That is the reason you swear it was on October 6th, because you saw it in Lindsay's notes?

A. Yes; but I know something else that happened two days afterwards, and that is why I stated it as the 6th—these two things I have to go by.

Q. Didn't you say a while ago that you knew it was on the 6th from what you saw in Lindsay's notes?

A. Yes; but something else happened two days after on the 8th.

Q. Didn't you say a while ago that it was on account of what you read from Lindsay's notes that you knew it was the 6th?

A. I might have said that.

Q. Now you want to change that, do you?

A. No; I don't want to change it.

Q. You based it on Lindsay's notes?

(Testimony of Russell Casey.)

A. I based it on his notes and something that happened two days later.

Q. Why didn't you put in this something a while ago when you stated how you remember it—you never thought of that second matter until just now, did you?

A. Yes; it stuck in my craw for a long time.

Q. You were working for Mackay, still you knew there was some contest between them and the Alaska-Juneau on the 6th when you accompanied Lindsay up there? [1428—1278]

A. I didn't accompany him up there; I was going up the road where you fellows put the fence up and I met him.

Q. And you had forgotten all about that date until you saw his notes and were talking to Lindsay?

A. I didn't say that.

Q. But you swear that the flume that was put in there was made out of new lumber?

A. I didn't say it was new lumber; I said if I remember right it was new lumber.

Q. Why don't you remember the lumber as well as you remember the date? A. I don't know.

Q. Now, it didn't take 25 or 30 men to cut this hole in the dam, did it? A. No, sir.

Q. Who are the men that did that?

A. I don't know.

Q. You were right there you said. A. Yes, sir.

Q. What was the first thing they did in cutting the hole?

A. Well, Mackay had pointed out the place on the

(Testimony of Russell Casey.)

dam and they had cut it out with axes or saws or something like that.

Q. How was it—an axe?

A. Two or three axes; if I remember there was a man by the name of August or something working on the dam.

Q. You don't remember of seeing any of these people I mentioned a while ago, Al Black,—

A. I don't; I knew him for years but I never knew him by name until I saw him in the courthouse.

Q. Will you swear that neither one of those was there at that time? [1429—1279]

A. I will swear that Al Black was not there.

Q. Will you swear that neither one of the others was there?

A. I won't swear, but I think Riordan was sharpening steel.

Q. Where? A. For the Ebner Company.

Q. At what place?

A. I don't know where the shop was; I think it was right alongside of the road.

Q. How long did you work up there packing lumber over to put a box in?

A. I worked from about, I believe, probably 10—half-past nine or ten o'clock until some time after half-past three or four that afternoon.

Q. What did you do then?

A. I went home and had my dinner.

Q. How long altogether did you work for Mackay?

A. I believe 29 days up here.

(Testimony of Russell Casey.)

Q. When did you commence and when did you quit?

A. I don't know; I am positive I quit on the 8th of October.

Q. But you don't remember when you commenced?

A. No, sir; I was driving a team for the Perseverance when I got that job there; I was the first one to work on the mill site, and Owen Kirk came afterward.

Q. The mill on Shady Bend? A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1430—1280]

The plaintiff, to further maintain the issues on its part, recalled as a witness R. A. KINZIE, who having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of R. A. Kinzie, for Plaintiff (Recalled).

The COURT.—I would like to ask Mr. Kinzie a question.

Q. You made some calculations as to how much miner's inches the Ebner people would require, basing your estimate on Mr. Muir's testimony as to how much horse-power he wanted?

A. I did; yes, sir.

Q. I believe you said it was 483 miner's inches?

A. 483 miner's inches.

Q. How many miner's inches would be required for your purposes—how many miner's inches do you require for the purpose of operating your mill?

(Testimony of R. A. Kinzie.)

A. Well, we are using at the present time everything our flume will carry, and will need additional water.

Q. How many miner's inches does your flume carry?

A. The flume will carry approximately 3,000 miner's inches.

Q. How much did you locate, 10,000 miner's inches?

A. I think it was 20,000.

Q. Well, now, how many months in the year can the defendant get 483 miner's inches at its dam, and you get 20,000 miner's inches at your dam?

A. It is pretty hard to say; during the period of high-water very likely the creek is carrying over 20,000 miner's inches of water, but 20,000 miner's inches of water, I think, is as much as the normal flow of the stream; during the [1431—1281] last rainy spell there would have been plenty of water, but the surplus this year, so far there has been at least three months that we could have done it.

(Questions by Judge WINN.)

Q. You heard Mr. Muir's testimony of his computation of your flume, didn't you—how much he calculated your flume up here near one of your tunnels carries—2,000 inches of water, didn't he?

A. I don't remember any such testimony.

Q. He did testify to it, didn't he?

A. 2,000 miner's inches of water?

Q. Yes.

A. That would be all right; it will carry an excess

(Testimony of R. A. Kinzie.)

of about 3,000 miner's inches of water.

Q. He said 2,000.

A. 2,000—that would be about 3,000 cubic feet; it will carry a little more water than that.

Q. A little more than the estimate he made—don't you remember his testimony?

A. No; I don't remember his testimony; I don't know how carefully the measurements were taken there.

(WITNESS EXCUSED.)

(Whereupon court adjourned until 10 o'clock tomorrow morning.) [1432—1282]

MORNING SESSION.

August 11, 1914, 10 A. M.

R. A. KINZIE on the witness-stand.

Cross-examination.

(By Judge WINN.)

Q. In figuring out the number of miner's inches of water horse-power that you estimated that the Ebner Company would be in need of, that was simply taking into consideration what there would be an immediate need of according to Mr. Muir's testimony, wasn't it—that is, the immediate needs which he testified concerning, which they would need to apply the water to—you only took into consideration those immediate needs?

(Question not answered because of objection.)

Q. Now, then, Mr. Kinzie, in estimating the loss of efficiency in the application of water to the various uses which Mr. Muir testified that he was applying his water, and for which he testified there would

(Testimony of R. A. Kinzie.)

be an immediate demand for the application of it, I wish you would state to the Court definitely how you arrived at that discount of 20 per cent?

A. Well, the efficiency under that head of the ordinary water wheels—say water wheels of the Pelton type—would be between 85 and 87 per cent efficiency; not, if you take the difference between 85 and 87, the 80 per cent efficiency would be the loss due to friction, pipe-lines, valves, angles, and so forth, and such losses.

Q. You leave a very small margin there, don't you,—the wheel of the kind that is being used up there, it is always estimated there will be at least 25 per cent of efficiency lost in simply the application to the water wheel alone? [1433—1283]

A. Oh, no, Judge.

Q. What will that be.

A. The loss in the wheel itself?

Q. Yes, sir.

A. Oh, it will amount, in small wheels, to about 15 per cent.

Q. Then you are only allowing 5 per cent for friction and all the other losses, are you not?

A. Yes; that is very liberal.

Q. I wish you would tell the Court after the water is applied to the wheel, what is the next power that the wheel puts in motion—what is it for, that is, is it running fans?

A. In case of a fan, it is the contact with the fan, and as the wheel revolves there is the same number of revolutions of the fan.

(Testimony of R. A. Kinzie.)

Q. Suppose the fan is some 3,000 feet in the mine, what then?

A. As to the efficiency of the water wheel?

Q. Yes. A. No difference at all.

Q. Suppose the water is taken into the mine through pipe and applied to the wheel in the mines, would that make any difference?

A. It would not make any difference if larger piping were used, because if the larger piping were used you could reduce your friction.

Q. Do you want the Court to understand that the pipe which is used in driving the fan, which is 3,000 feet in the mine, that there would not be any loss by friction?

A. In the first place I didn't hear him say that the fan was 3,000 feet in the mine.

Q. Isn't that Mr. Muir's testimony?

A. No. [1434—1284]

Q. You are positive of that, are you?

A. I am quite positive he wouldn't put a fan 3,000 feet underground and run the water to it.

Q. Didn't he testify that the fans were run by separate water power?

A. Run by separate wheels; yes, sir.

Q. What do you understand that this wheel at the mill where the water is applied develops water for?

A. At which mill?

Q. Muir's place up there. A. Sampling mill?

Q. Yes. A. For driving the stamps.

Q. Isn't there any loss of efficiency after the power leaves the water wheel in the application of it to the

(Testimony of R. A. Kinzie.)

running of the stamps?

A. The loss isn't very large, not over one-half of one per cent.

Q. That is the only estimate that you have made in the 20 per cent loss, that there would be one-half of one per cent loss after it left the water wheel?

A. Simply the sliding of the belt.

Q. Any friction in the machinery of any kind?

A. That is part of the power it takes to run the mill.

Q. That is what?

A. That is included in the power; he put his power very high; he put it 25 where it ought to be about 12.

Q. I am asking you if there is any loss in friction in the application of power to the machinery that runs the stamps at the main water wheel?

A. That is what the power is doing, it is overcoming [1435—1285] the friction.

Q. How much of the efficiency would be lost in overcoming that?

A. That would depend on the installation, as to the friction in the main water wheel.

Q. You figure that to be only one-half of one per cent?

A. No, it would be more than one-half of one per cent.

Q. What would you figure it at?

A. I have never seen his stamps, but in 750 stamps it would not amount to more than $\frac{3}{4}$ per cent.

Q. And your estimate is not based on what kind of

(Testimony of R. A. Kinzie.)

machinery or stamp-mill he has up there?

A. I have never seen it.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. The friction in the main shaft and the other machines in the mill, that is part of the friction that the 20 per cent is to overcome?

A. Yes; that is what the power is for.

Q. That is no loss in efficiency as far as the development of the power is concerned?

A. It is entirely separate.

Q. Now, Mr. Kinzie, I would like to ask you about that fence, in regard to that fence that Mr. Harri put up there on the boundary of the Russell claim—what happened to that fence?

A. It was torn down.

Q. By whom?

A. That was the California-Nevada Copper Company.

Q. Did that impede their building of the flume any? A. I don't think so. [1436—1286]

Q. What did they do when they came to the fence?

A. They tore it down and went right through there.

Q. (Question by Judge WINN.) You know that flume line is built around that fence and shows it in one of the pictures, don't you? A. Yes.

Q. You know the fence was put up there on what we claim was the Fractional placer, don't you?

A. Yes.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [1437—1287]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal JAMES LYNN, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of James Lynn, for Plaintiff (Recalled in Rebuttal).

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You have been sworn, Mr. Lynn?

A. Yes, sir.

Q. Do you know where the Ebner dam is?

A. Yes, sir.

Q. Did you have any occasion to go up there in October, 1910? A. Yes, sir.

Q. At the time you went up there was Harri already on the ground with his tent? A. Yes, sir.

Q. Do you know the exact date that you went up there first? A. No, sir, I don't.

Q. But you do know that Harri was on the ground?

A. Harri was there; yes.

Q. What did you go up there for?

A. I was hauling lumber.

Q. For whom?

A. California-Nevada Copper Company.

Q. To where? A. To the dam.

Q. Was there any lumber there when you delivered your first load of lumber? A. No, sir.

Q. That was the first lumber delivered?

A. Yes. [1438—1288].

Q. At that time had there been any grade built be-

(Testimony of James Lynn.)

tween Harri's tent and the dam?

A. No; there was no grade there.

Q. Had the dam been cut?

A. Well, I am not sure about the dam; always has been an old dam there, and I don't know anything about the dam.

Q. You are not sure about the condition of the dam? A. No, sir.

Q. But you know there was no grade between Harri's tent and the dam itself?

A. No; there was no grade there.

Q. Now, had there been any flume put in?

A. No, sir.

Q. None whatever when you delivered the first load of lumber? A. Not a bit.

Q. It was afterwards that the flume was built—after you delivered the first load of lumber?

A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Where did you deliver that lumber you took up there? A. I delivered it at the dam.

Q. How near to the dam?

A. Right at the dam—as close as you could get to it with a team.

Q. How close was that? A. Maybe 40 feet.

Q. Did you turn off that little road that leads from the main Basin Road to the dam? A. Yes, sir.

Q. You saw a road there, cleared out? [1439—1289] A. Yes.

(Testimony of James Lynn.)

Q. And the first lumber you took up there you unloaded, you think, about 40 feet from the dam?

A. Well—

Q. Was it above the dam or below the dam?

A. Above the dam.

Q. What date was it?

A. I don't remember the date.

Q. You don't remember the date? A. No, sir.

Q. Did you go down below the dam to see whether there had been a box about 14 or 15 feet long put in, just below the dam? A. No, sir.

Q. And you couldn't tell whether there had been—you were not looking for that, were you?

A. No, sir; I wasn't looking for that.

Q. You don't know whether there was a place cut out in the dam or not—you didn't take any notice of that? A. No, sir.

Q. Did you see that fence that Harri had put up between the tent and the dam when you were up there?

A. I don't know nothing about a fence; no.

Q. Now, you don't want the Court to understand that between the dam and Harri's tent that the right of way had not been all cleared off and prepared when you were up there, do you?

A. Why, there was a place for me to drive in and turn around with a four-horse team.

Q. And you know between the dam and Harri's tent that the grade had been prepared there, hadn't it, for a flume, when you were up there?

(Testimony of James Lynn.)

A. I don't think there was any grade there at all.
[1440—1290]

Q. Do you say it had been cleared out and graded and prepared for a flume, or were you looking for that?

A. I wasn't paying much attention to that part of it.

Q. Who were you hauling the lumber up there for?

A. The California-Nevada Copper Company.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1441—1291]

The plaintiff, to further maintain the issues on its part, recalled, for cross-examination, J. B. MARSHALL, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Testimony of J. B. Marshall, for Plaintiff (Recalled).

Cross-examination.

(By Judge WINN.)

Q. Now, Mr. Marshall, in determining by you the boundaries of the Harris Mining District so as to ascertain some of the facts that you have testified to in this case, and also in making up this list which was offered in evidence while you were on the witness-stand, where did you take the boundaries of the Harris Mining District to be?

A. From the Taku River on the south to Salmon Creek—well it was first established at Salmon Creek

(Testimony of J. B. Marshall.)

on the north, and afterwards, I think, at Auk Village.

Q. Which one of the boundaries did you take as the boundary; did you take the boundary as described by this society that they call the Miners' Organization, or did you take one wherein they amend the boundaries?

A. I took it where they amended the original boundaries?

Q. And that ran over to what point?

A. Taku River up to Auk Village.

Q. Around Stephen's Passage?

A. It included Douglas Island.

Q. Did it include any of Admiralty Island, the way you figured it? A. No, sir.

Q. This description, the one you took reads as follows: [1442—1292] "Commencing at the Auk Indian Village and running northeast to the boundary line of Alaska and British Columbia, thence along said boundary line to where it intersects the Taku River, thence down the Taku River and Taku Inlet to Stephen's Passage, thence along Stephen's Passage to the point of beginning"—is that the one you took? A. Yes, sir.

Q. Then the Auk Village you took for the starting point wasn't this Auk Village in Juneau?

A. No; it is behind Douglas Island here.

Q. There is nothing in the record, however, to show which Auk Village the miner's organization determined upon, is there? A. I hardly think there is.

Q. You don't know how long this Auk Village here

(Testimony of J. B. Marshall.)

in Juneau and the one up above Juneau have been in existence, do you? A. No, sir.

Q. I notice by this exhibit, which is Plaintiff's Exhibit No. 41, being a list which you prepared, or went over and checked over, but which you say in the first instance was not prepared by you—who did you say prepared this?

A. Mr. Hellenthal brought it to me; I presume it was prepared in his office, I don't know.

Q. Then you checked over just what books of record, Mr. Marshall, there are in the recorder's office in checking this list?

A. In what are known as 1 to 11 in placers; I will say there is a little confusion in regard to book 1; there are two books down there that are known as book 1; I think one is exclusively a placer book while the other is mixed with lode locations and probably other instruments, too.

Q. Now, I will ask you, Mr. Marshall, while we are on this subject [1443—1293] of the confusion of those two books, if you haven't included in this list which you have here any of what may be called Volume 2 of Miners' Claims and Water Rights and Placer Locations, and you have them in as water location notices?

A. I think not; there are some of these that are combined, the placer locations and the water locations combined.

Q. Have you that book here in court?

A. No, I haven't; I didn't bring the book up.

(Testimony of J. B. Marshall.)

Q. Could you bring it up—I want to direct your attention to it?

A. I didn't have any reference to Volume 2.

Q. You have reference to Volume 1—you call it Volume 1? A. Volume 1, page 45.

Q. Now, Mr. Marshall, in determining and figuring up in this list which you prepared as to how many notices of water locations that conveyed the water to specific points of use, what did you take into consideration?

A. Well, whether it designated a point where the water was to be used in a general way.

Q. General way—what do you mean in a general way?

A. I mean if it described the place of use in such a way that the place of use could be indicated, I included it in there.

Q. Supposing the notice should read: "Place of intended use, for working the claim situated on the northwest or left-hand side going up the creek known as the — creek"—what would you take that to designate?

A. Taking into consideration all of the locators of the claims, if it was evidently the same parties who located the claims and the claims referred to could be identified, I would take that as designating the place of use. [1444—1294]

Q. Another one is this way—"Place of intended use, locators' bar claim located opposite to the Jackson and Parks Creek claims in the gulch"—what would you take that—as a specific designation?

(Testimony of J. B. Marshall.)

A. Yes, sir.

Q. Then, for instance, where you would have "300 inches or less to be conveyed on any place on our placer mining ground in said gulch or outside of said gulch"—you would take that as a designation?

A. If the placer mining ground could be located, yes, sir.

Q. You checked over, then, these mining location notices and the record which was given you by Mr. Hellenthal? Volumes what? A. 1 to 11.

Q. Of what?

A. Placer and Water Locations; I stated that some of the references to 1 are in this book there known as Lode and Placer Claims and Water Rights, and the entries in this are rather confused.

Q. Now, those are the only books that you went through to ascertain about water locations, are they?

A. Only the Placer and Water books; yes, sir.

Q. No others? A. No, sir.

Q. Those are the only volumes? A. Yes, sir.

Q. Now, in estimating the place at which the water was to be used, if it designated that this water was to be used upon certain properties, and so forth, you took that as being the designation of the place of use of the water? A. Yes, sir. [1445—1295]

Q. Now, then, do you know, Mr. Marshall, outside of that question of the designation of the place of use, as to how many of these water location notices that you checked over that absolutely give some definite and certain point of use?

A. Well, if you are going to say so that you can

(Testimony of J. B. Marshall.)

fix the exact point where it is used, then I cannot give you any intelligent estimate on that; I think there are relatively few that fix a definite point.

Q. Very few? A. Very few.

Q. I will ask you if it isn't a fact that out of this list that you have prepared, there are 134 location notices that designate no place of use at all?

A. You mean of the ones I have stated which designate the place of use?

Q. I mean in this entire list that you went over and checked over—which is this exhibit that has been offered in evidence?

A. The total number, I think, was 386.

Q. Well, I think we go you a little better—I think we have 456 total number of locations that we have discovered.

A. They are a great many that are not within the Harris Mining District; what we have been discussing are in the Harris Mining District.

Q. You haven't included in this list anything but what you determined was in the Harris Mining District from reading over the boundary lines as I read them to you?

A. I attempted to do that; I may have been wrong and gotten a few outside of that; there are some names around here that are used for unnamed creeks that are used quite frequently, [1446—1296] but I attempted to confine them to the Harris Mining District, and I think I did so very thoroughly.

Q. As well as you could? A. Yes, sir.

Q. I will ask you as to how many of these water

(Testimony of J. B. Marshall.)

location notices that you checked over had absolutely any place designated for the use of the water?

A. Seventy-five.

Q. You only got 75? A. Yes.

Q. Did you make a careful examination of that, Mr. Marshall? A. Yes, sir.

Q. A careful examination of the books that you have mentioned just now that you went over?

A. Yes.

Q. Seventy-five out of how many?

A. Out of 386.

Q. That had no place designated?

A. No place designated at all.

Q. How many had this general designation, such as on a certain mining claim that the water was to be conveyed to and used on—do you remember?

A. No; I cannot distinguish now as to the number that designated in a certain way and the number that designated in a certain other way.

Q. Now, how many—you don't remember how many of these location notices that absolutely had a point designated for the use—you haven't segregated them? A. No, sir.

Q. But in making your estimate you took the general description [1447—1297] of certain mining claims that were referred to in there, stating that the water was to be taken up for certain mining claims to be used upon them, and you included that as the designation? A. Yes, sir.

Q. But, of course, where it had a particular point of designation, you included that, too?

(Testimony of J. B. Marshall.)

A. Yes, sir.

Q. And you don't remember how many had a particular point of designation? A. No, sir.

Q. And you say you think that 75 out of the list that you have there had no place designated for use?

A. Yes, sir.

Q. Now, did you make any estimate, Mr. Marshall, of this list that you have to ascertain how many of those notices stated that they took up so many miner's inches of water, and how many of them said that they took up water in some other way?

A. No, I wasn't requested to ascertain anything of that sort.

Q. You were not requested to check it for that purpose? A. No.

Q. Now, how many water location notices, Mr. Marshall, out of this list that you prepared or checked over, did you find had the date of posting upon it, and of course, the notice will show when it is recorded, and had the date of the notice on—had these three things—do you understand?

A. Yes, but I didn't check it for the date of posting; I checked it for the date as the same appeared on the notice.

Q. You didn't make any checking for that?

A. No.

Q. That is, you cannot tell me out of this number of water [1448—1298] location notices which you have checked over, how many had the notice date, and the date of posting on the mining claim?

A. No; I didn't check it for that purpose.

(Testimony of J. B. Marshall.)

Q. Don't you know that there is a very small proportion of them, Mr. Marshall, in looking over the records that have any date of posting on them?

A. Yes.

Q. Now, then I will ask you another question, Mr. Marshall,—did you find any notices of water locations that had the date of posting subsequent to the date of notice?

A. I think I remember a very small number—I don't think it was more than two or three that I recall the date of posting and the date of notice together and a difference between the two.

Q. You made no particular examination, though, to ascertain this fact? A. No, sir.

Q. Now, did you find any notice that had the date of notice after the date of posting?

A. I cannot recall that; I wasn't looking for the date of posting and I didn't pay any attention to that.

Q. You didn't pay any attention particularly to the date of posting? A. No, sir.

Q. Now, then, in your summary where you say that a certain number of water location notices were recorded within 10 days, you arrived at that conclusion by seeing the date on the notice and then seeing that it was recorded within 10 days from the date of the notice, irrespective of ascertaining as to when the notice was posted upon the mining claim?

A. Yes, sir. [1449—1299]

Q. Now, then, of course, in arriving at that estimation of the number of water location notices that

(Testimony of J. B. Marshall.)

were recorded within 10 days, there is nothing on the record to show as to whether or not the notice was ever posted, in a great many of them, is there?

A. I think there is only a very few that show the notice was ever posted.

Q. A very few of them? A. Yes, sir.

Q. Then, of course, in arriving at this number that you say were recorded within 10 days, you give the benefit of that point to all of those that had a date on them and show from that date the recording was within 10 days? A. Yes.

Q. Of course there is nothing on the record to show whether a large portion of those notices were ever posted upon the claim, is there? A. Not many.

Q. You simply had to conclude that the party did post them upon the claim?

A. I didn't conclude anything about it; I didn't know anything about it; the record didn't show it.

Q. But in making your estimation, Mr. Marshall, of those that were recorded within the 10-day limit, you did take notice of the date of location and date of recording? A. Yes, sir.

Q. Irrespective of anything on the record that would show when the notice was posted?

A. Yes, sir.

Q. Now, in making up this data, then, that is at the head of this list, Mr. Marshall, which you prepared, you have "A, [1450—1300] place on intended use," and under that subdivision A you included all of the notices that had a specific spot designated for the use of the water, and all those in

(Testimony of J. B. Marshall.)

a general way that stated it was to be used upon certain mining claims?

A. If it showed where they were to be used they are all designated by that letter A.

Q. Supposing a notice would say it was to be used on my placer mining claim, the claim opposite that notice?

(Question not answered because of objection.)

Q. Well, then, Mr. Marshall, "X, no place of use designated"—that is where absolutely there is an absence of anything in the notice about where the water is to be used? A. Yes, sir.

Q. Then, under "B, where time between location and recording is 10 days or less"—that is a pretty broad assertion—what do you mean?

A. I mean that where in the notice—at the beginning, the body of it, or at the end,—it showed a date, I then looked to see if the date stamped by the recorder as being the date of filing for record was within 10 days of that date; if it was, I included it in that.

Q. Irrespective of whether the notice does show it had been posted? A. Yes, sir.

Q. Now, on this "O, where time between location and recording is more than 10 days"—how did you arrive at that?

A. I arrived at that in the same method I described in the other.

Q. Whether the notice designated whether it was posted or not? A. Yes, sir.

Q. Then, you say "Where time between location

(Testimony of J. B. Marshall.)

and recording is 10 days or less" you mean that the only location of the water [1451—1301] right that would appear upon the record would be just the fact that you have stated? A. Yes, sir.

Q. Without anything about the posting?

A. Yes, sir.

Judge WINN.—I think that is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Marshall, in determining the date of location, as I understand it you fixed upon the date given in the notice as the date of such location?

A. Yes, sir.

Q. There are no records in your office, affidavits or other records, that indicate as to whether a notice was posted?

A. No; there is—well, I say there is not—now, I don't remember exactly the form in which it appeared, but I think in the end of the notice the time of posting was set forth.

Q. The original notice merely dates the notice and subscribes it and records it? A. Yes, sir.

Q. I want to get this clear into the record, Mr. Marshall—that is how you determined the date of posting, irrespective of all other evidence, that is, from the date contained in the notice?

A. I didn't determine the date of posting at all.

Q. Calling your attention now to exhibit No. 54, on the 3d page of that exhibit you will notice this in the notice, "Notice posted on the creek this 17th day of November, 1905. Witness my hand and seal this

(Testimony of J. B. Marshall.)

17th day of November, 1905. The Alaska Perseverance Mining Company, by John R. [1452—1302] Mitchell, Agent"—that is one of the character of notices that I have just asked you about.

A. Yes, sir.

Q. That is one of the notices that contains a statement of when the notice was posted?

A. Yes, sir.

Q. And one of the few that contains such a statement? A. Very few.

Q. The ordinary notice does not contain any statement of posting? A. No, sir.

Q. But the ordinary statement is subscribed to—that is, the blank day of blank?

A. Indicates the day on the notice.

Q. Here now, for instance, calling your attention to exhibit No. 55, the first page of that exhibit, reads like this: "This 5th day of February, 1900. Oscar Ohman."—that is one character of notice.

A. Yes.

Q. In that notice you would take the date as being located on the 5th of February, 1900? A. Yes, sir.

Q. That you call the date given in the notice?

A. Yes, sir.

Q. Nothing in there to show when it was posted?

A. No, sir.

Q. Nothing but date of location?

A. That is all.

Q. Now, the following one on the same page: "Filed for record this 12th day of May, 1901"—that also does not refer to the date of posting? [1453—1303]

(Testimony of J. B. Marshall.)

A. No.

Q. Merely shows the date of location of the water right? A. Yes.

Q. And the date of location was fixed by you in this list in a similar manner? A. Yes, sir.

Q. Now, calling your attention to exhibit No. 58, the notice reads: "Dated August 1st, 1910"—that is the usual way for a water location notice to be dated?

A. That is quite a common way; sometimes the date appears up here at the top and sometimes it appears in the body of the notice, like this: "Notice is hereby given that we, the undersigned, on the 5th day" and so on; and sometimes in the body, and sometimes at the bottom.

Q. Then that date, wherever it appears or however it appears, you took as the date of location?

A. Yes, sir.

Q. In order to determine whether it had been recorded within 10 days after that date?

A. Yes, sir.

Q. Now, Mr. Marshall, just another question—in preparing this, in going over this notice did you go over all the books that contained water right notices in your office?

A. I have never found a water right notice in any other book, and I don't believe there are any in any other books except those that are designated as Placer and Water Right records.

Q. Those are the books you went over?

A. Yes, sir.

Q. And you took all the notices that are contained

(Testimony of J. B. Marshall.)

in those books as located within the Harris Mining District? [1454—1304] A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Questions by the COURT.)

Q. In making up that list, or in checking up that list, of course you came to the location notice signed by H. T. Tripp, locating 10,000 miner's inches of water flowing in Gold Creek? A. Yes, sir.

Q. Said notice reading as follows: "To convey by ditch, flume and pipe along the bank of Gold Creek on the southerly side or to cross the creek with pipe or flume or both to any place on the property known as the Ebner mine, or to carry across or farther than the limits of the said mine property."—Now, in which category did you place that notice so far as stating the place of intended use?

A. Why, I think I would take that as indicating the place of use.

Q. Did you? A. I cannot remember.

Q. Take your list and see whether you did or not; it was recorded on the 25th day of October, 1910.

A. Yes, sir.

Q. You put that in the list as showing the place of use? A. Yes, sir.

Q. Are you able to state with any degree of accuracy how many notices of that general character you found? A. No; I could not.

Q. You could not state that?

A. No, sir; I would like to say that, for instance, where that says, or at any other place, or some such language as that, the mere fact that it might have

(Testimony of J. B. Marshall.)

been used at some other [1455—1305] place, I didn't allow that to interfere with the idea that the use was designated if it said any certain place, it said on the Ebner mine.

Q. Well, now, if you find a notice like this: "To be conveyed by ditch, flume or pipe, or in any other practical or convenient way from said creek and creek bed"—what category would you put that notice in?

A. I think I would place that in the list as not indicating a place of use; it says simply to be taken from the creek bed, and it doesn't say where to.

Q. Now, see whether on the 17th day of August, 1910, see where you put the location notice signed by the Ebner Gold Mining Company by John R. Winn, its agent.

A. I put that "X-B, the place of use not designated, recorded within 10 days."

Q. Well, now: "To be conveyed by ditch, flume or pipe or any other practical or convenient way from said creek and creek bed and to be used in the working and mining and development of the mines owned by said Ebner Gold Mining Company, and in milling, treating and reducing the ores taken from said mines of said corporation and for other beneficial and useful purposes"?

A. I remember that the question came up about this very notice, and the result was this that where the notice said it was water used to develop the mine, I put it as the place not designated; where it said to be used on a mine I put it in as the place of use

(Testimony of J. B. Marshall.)

designated; I don't remember that particular notice and I don't know how I put that particular notice in.

Q. Now, in your list did you place a notice recorded on the 8th day of August, 1910, signed by L. D. Mulligan? [1456—1306]

A. I placed it as a place of use not designated—X-B.

The COURT.—That is all.

(WITNESS EXCUSED.) [1457—1307]

Mr. HELLENTHAL.—I will offer in evidence the complaint in the case of H. T. Tripp vs. Alaska-Juneau Gold Mining Company, a corporation, Alaska Treadwell Gold Mining Company, a corporation, O. M. Harri and R. G. Datson.

(Whereupon said complaint was received in evidence and marked Plaintiff's Exhibit No. 65.)

Mr. HELLENTHAL.—It is now agreed between counsel that the allegations contained in plaintiff's reply, commencing on the fifth line of page 11, with the words, "In this connection the plaintiff avers that on the 8th day of May, 1911, the defendant, the Ebner Gold Mining Company brought an action against the plaintiff, the Alaska-Juneau Gold Mining Company in the District Court for the District of Alaska, Division Number One, at Juneau, said action being No. 835-A on the docket of said Court," and so forth—that the reply commencing with the language on page 11, up to and including the words, "Done in open court this 17th day of March, A. D. 1914. Robert W. Jennings, Judge," on page 80, states correctly the proceedings had by and between

the Ebner Gold Mining Company on the one hand and the Alaska-Juneau Gold Mining Company on the other, in the case entitled "The Ebner Gold Mining Company vs. the Alaska-Juneau Gold Mining Company," brought in the District Court for the District of Alaska, Division No. 1, at the time indicated in the papers referred to in these allegations and determined in the manner indicated in the allegations referred to, the same being cause No. 835-A.

Mr. HELLENTHAL.—Now, your Honor, I offer in evidence some of the findings of Judge Wickersham in the case of C. M. Thorndyke, et als, vs. the Alaska Perseverance Mining Company. The findings that I am offering are findings that refer to the miners' rules and regulations relating to the diversion and appropriation of water which have been received in evidence [1458—1308] in this case, the purpose being to show that these rules and regulations were appealed to in the courts and relied upon in the courts in making their decision governing the appropriation of water. I am only offering such findings as relate to this matter. The first finding I offer will be finding No. 3, beginning on page 1130 of volume 3 of the printed record of that case as it has gone to the Circuit Court of Appeals; also findings 17 and 18—finding 17 refers to an exhibit in the case so I will have to offer that exhibit also—that is, a portion of it—such portion as findings 17 relates to.

(Whereupon said findings were read into evidence as follows:)

3. "The Court further finds that in October, 1880,

the miners in and near the vicinity of the present site of Juneau, Alaska, discovered gold in Silver Bow Basin, where the property in litigation in this case is situated; they called miners' meetings, organized the Harris Mining District, embracing such basin, adopted rules and regulations governing the location, size and rights of miners' claims, elected a local recorder, and instituted a miners' form of government where none had previously existed. At a subsequent meeting held in February 18, 1882, the miners adopted additional rules and regulations governing the appropriation and diversion of water from streams for mining and other beneficial uses, and that the rules and regulations governing the appropriation and use of water, as set forth in said miners' rules and regulations, were as follows, to wit:

'Art. 1. The right to use the running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation.

Art. 2. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purposes, the right [1459—1309] ceases.

Art. 3. The person entitled to the use may change the place of diversion if others are not injured by such change may extend the ditch, flume, pipe or aqueduct by which the diversion is made to take place beyond that where the first use was made.

Art. 4. A water appropriation may be turned into the channel of another stream and mingle with its waters and then reclaimed, but in reclaiming it the

water already appropriated by another must not be diminished.

Art. 5. As between appropriators, the one first in time is the first in right.

Art. 6. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein: First, he claims the water there flowing to the extent of (giving number) inches, measured under six-inch pressure; second, the purpose for which he claims it and the place of intended use. A copy of the notice must within (10) ten days after it is posted be recorded in the books kept by the recorder of the district.

Art. 7. Within twenty days, during the working season, after the notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Art. 8. By completion is meant conducting the waters to the place of intended use.

Art. 9. By a compliance with the above rules, the claimant's rights to the use of water relates back to the time the notice was posted.

Art. 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a [1460—1310] subsequent claimant who complies therewith.' "

Finding 17. "The Court further finds, after a

careful consideration of the evidence and the law relating to the miners' rules of the Harris Mining District, which were adopted in 1880, and contained in the first series of ten articles referred to in plaintiffs' complaint, and marked Plaintiff's Exhibit No. 16 in this case, fell into utter disuse before the rights of either of the parties to this action were claimed to be initiated, and that the same are inconsistent with the general laws of the United States and are, therefore, of no effect in the determination of the issues in this case."

Finding 18. "The Court further finds that prior to the year of 1884, the miners of the Harris Mining District adopted rules governing the appropriation of water on public lands for mining purposes, and ever since that act the miners throughout the various camps in Alaska, and particularly Harris Mining District, have conformed to the custom of posting notices and declaration of water rights and the recording of the same, and the waters from public streams have been diverted and used for mining and other beneficial uses, and such was the custom at the time of the initiation of defendant's rights herein and the commencement of this action and down to the present time."

Judge WINN.—We will agree that the first ten articles in this exhibit 33 in this case are the same as referred to in the findings of Judge Wickersham as being exhibit No. 16 of the plaintiff in the case of Thorndyke et al. vs. the Alaska Perseverance Mining Company.

(Whereupon court adjourned until 1:30 P. M.)
[1461—1311]

AFTERNOON SESSION.

August 11th, 1914, 1:30 P. M.

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal SIMON HELLENTHAL, who being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Simon Hellenthal, for Plaintiff
(In Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. I hand you here a paper that purports to be a list of authorities, and ask you to look at it—you are familiar with that document?

A. I am.

Q. Where did it come from?

A. It has been in our custody since the preliminary hearing on the injunction matter; it was handed us either by Winn or Burton of the firm of Winn and Burton.

Q. What is the purpose of it?

A. It is supposed to be a copy of a brief filed at that time.

Q. On what point—just indicate the circumstance.

A. There was a contention in this court at that time whether or not the court should take judicial notice of the customs as they existed in the Harris Mining District.

Q. Rules or customs? A. Rules and customs.

Q. At that time who requested the court to take

(Testimony of Simon Hellenthal.)

judicial notice of those rules and regulations?

(Objection to question and question withdrawn.)

Q. What contention was made by the defendant in this case upon the hearing for a preliminary injunction heard some few months [1462—1312] ago with relation to the miners' rules that are in evidence here?

A. It was contended by the attorneys representing all the defendants that the court should take judicial notice of the rules and regulations as set up in the case of Thorndyke and others against the Alaska Perseverance Mining Company.

Q. What rules and regulations are you referring to with reference to those that are in evidence now?

A. The same rules as are now in evidence pertaining to the appropriation and acquisition and the rights of water.

Q. Was there any contention made at that preliminary hearing or was there any evidence before the court that those rules were in force?

A. It was contended that there were certain facts presented in the case of the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company, Case 835 of this court, in which the complaint set up certain rules—

Q. When you say certain rules, what rules do you mean?

A. Certain rules set up in that complaint regarding the right to use the water, being the same rules that we have offered in evidence in this case, being the last 11 rules which were adopted by the miners

(Testimony of Simon Hellenthal.)

in February, 1882, it was contended that as long as these rules were set up in this complaint they were before the court, that this was previously between the same parties, and the complaint was offered in evidence.

Q. This complaint was offered in evidence by the defendant? A. Yes, sir.

Q. Was there any contention at that time made by the defendants that these rules were in force at the time this hearing was had, and were observed?
[1463—1313]

A. That was the contention.

Q. That they were in force? A. Yes, sir.

Q. Now, previous to the hearing, or at the time of the hearing, were all the defendants in this case before the court?

A. I wouldn't be certain, but the records show, I think, that they were.

Q. They were all being represented by whom?

A. Winn & Burton.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. If any such contention was made, Mr. Hellenthal, in that case by counsel in argument, the argument was based on, principally, the fact that Judge Wickersham had, in some way or another recognized these miners' rules and regulations with respect to the appropriation of water, wasn't it?

A. Yes; it was made in connection with the case

(Testimony of Simon Hellenthal.)

of Thorndyke against the Alaska Perseverance Mining Company.

Q. And now it has been ascertained from the original decision of Judge Wickersham, from the files in this case, that that was different from any public or printed decision that was to be had at the time that argument was made—isn't that so?

A. I don't think so.

Q. Did you know until this morning that Judge Wickersham's decision—the private opinion in this case, is different from his printed decision in the record in the Thorndyke case?

A. No; I don't think that is the original opinion that is on [1464—1314] file here; it is only a carbon copy; I think that copy has been modified by interlineations—I am still trying to find that out.

Q. You know that Judge Jennings, upon passing on this case, did not take into consideration anything about miners' rules and regulations, don't you?

A. He passed upon them and found that they were in force.

Q. Judge Jennings, in the rendition of his decision in this case?

A. If I remember rightly, yes.

Q. Your contention is, then, that this court has already passed upon the proposition that the miners' rules and regulations pertaining to the acquisition of water were in force and effect at the time the temporary hearing was had in this case—is that your contention? A. That is my understanding.

(Testimony of Simon Hellenthal.)

Q. And it was under testimony offered by myself as to the existence of the miners' rules and regulations?

A. You contended that the offer of that complaint was testimony.

Q. And so there was no testimony offered on behalf of myself, either by affidavit or otherwise, that the miners' rules and regulations were in force and effect?

A. Not unless you considered the sworn complaint testimony on it, and I think that is testimony.

Q. And so aside from that there was no testimony offered in the case at all?

A. No; not aside from that.

Q. Don't you know in 835-A, that there was no contention made on the trial of that case about the existence or non-existence of the miners' rules and regulations with respect [1465—1315] to taking up water, but the only proposition passed upon by Judge Cushman was a question of crossing through this land for the purpose of conveying the water?

A. No; I don't know any such thing; I consider that in that case there were two important questions—there was one preliminary question, and that was whether there was any riparian rights in the case.

Q. Aside from that, Mr. Hellenthal, I will ask you if it isn't true that the findings of fact of Judge Cushman in that case only found upon a certain custom about crossing through land, and he made no reference whatever to the miners' rules and regulations. You stated that in the complaint in 835-A

(Testimony of Simon Hellenthal.)

the miners' rules were set forth?

A. It is in our answer—I stand corrected—it was in the answer in place of the complaint.

Q. There were no findings made or anything taken into consideration by Judge Cushman on the rendition of his decision about the rules and regulations—he simply found on the custom, didn't he?

A. Found on two things—just found on the rules. Judge WINN.—That is all.

(WITNESS EXCUSED.) [1466—1316]

Mr. HELLENTHAL.—I now offer in evidence the opinion of this Court upon the preliminary injunction, as it appears in the files and records of this case, No. 1074-A.

(Whereupon said opinion was read into the record as follows:)

“In the United States District Court, for the District of Alaska, Division No. One.

No. 1074-A.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

EBNER GOLD MINING COMPANY et al.,
Defendant.

Opinion.

JENNINGS, Judge:

Defendants claim that some sort of superior equity or right by relation to June 20, 1910, enures

to them by reason of the rules of the old Harris Mining District and of the fact that on that date H. T. Tripp posted a notice claiming 10,000 inches of the water of Gold Creek.

There is no statute in Alaska *requiring* notices of the location of water rights to be posted or recorded, although there is a statute *allowing* them to be recorded, but that statute says nothing as to the effect of a notice when posted or recorded.

Defendants maintain, however, that the customs and rules of the old Harris Mining District are in evidence and that the Court should take them into consideration and allow defendant's water right to date from that notice. Conceding that the Court should take said customs and rules into consideration, and proceeding so to do, it appears that Articles 6, 7, 8, 9 and 10 of said rules provide as follows: [1467—1317]

'Art. 6. A person desiring to appropriate water must post a notice in writing, in a conspicuous place at the point of intended diversion, stating therein: First, he claims the water there flowing to the extent of (giving the number) inches, measured under a six-inch pressure; second, the purpose for which he claims it, and the place of intended use. A copy of the notice must within ten (10) days after it is posted be recorded in the books kept by the recorder of the district.

Art. 7. Within twenty days, during the working season, after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must

prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Art. 8. By completion is meant conducting the waters to the place of intended use.

Art. 9. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

Art. 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.' "

It is apparent, by casual inspection of the Tripp notice that it fails to measure up to the requirements of Article VI—not only that, but the evidence shows that during the *ternty* days after the notice was posted the claimant (or his grantees) did not "commence the excavation or construction of the works in which he intends to divert the water" as provided in Article VII—Article VII therefore was not complied with. As *Article* 6 and 7 were not complied with, defendants gain no priority by relation by reason of the Harris Mining District rules, for it is "By a compliance [1468—1318] with the above rules the claimant's right to the use of the water relates back to the time the notice was posted."

Plaintiffs claim to have posted a notice on August 1, 1910—the Mulligan notice; even if they did, that notice is as defective as the Tripp notice—neither notice contains a statement of "the place of intended use."

On the 17th of August, 1910, defendants posted and recorded another notice. This notice I leave out of consideration, because prior to that time plaintiffs had actually commenced work.

On the 8th day of May, 1911, plaintiffs posted another notice—this notice I leave out of consideration, because prior to that date defendants were openly prosecuting work on their flume.

Thus, so far as relation back by virtue of Harris District Mining Rules is concerned, there is left out of consideration all the posted notices which have appeared in the evidence.

No case has been cited, and I apprehend that none can be found, where a water right in the absence of compliance with a statute or with local rules or customs, relates back to a written notice as a notice, pure and simple, securing to the poster of such notice rights which he would not have unless he had taken steps equivalent to a written notice. Notwithstanding that, it does not follow that if a notice be posted, even in those States where there is no statute or local custom or rule, the notice is of no effect whatsoever. Even in such cases the notice may have a very important effect, as evidence of the intention of the party posting it. This intention of the party is one of the vital elements that go to make up a valid appropriation of water. [1469—1319]

In the case of *McFarland vs. Perseverance Company* it is said by Judge Wickersham:

“To constitute a valid appropriation of water, three elements must always exist.

(1) An intent to apply it to some beneficial use

existing at the time or contemplated in the future.

(2) The diversion from the natural channel by means of ditch, canal or other structure.

(3) The application of it, within a reasonable time, to some useful industry.”

And he cites in support thereof

Nevada Ditch Co. vs. Bennett, 30 Ore. 59;

Lowe vs. Rizor, 25 Ore. 557.

And, in 3 Alaska, 572, Miocene Ditch Co. vs. Champion Mining Company, those three elements are again mentioned as being ——— essentials to constitute a valid appropriation of water.

I think that the statement of the essentiality of those three requirements may be considered as borne out by the authorities.

Now, the part that the notice would play under such circumstances, in jurisdictions where there is no statute nor local rules, is this: It would go to establish the first essential, to wit: intent—it would be evidence of the intent.

Miocene Ditch Co. vs. Mining Co., 3 Alaska, 582;

Weil, Section 380;

Weil, Section 376.

Not only does the notice have the effect of furnishing evidence of the intent of the persons posting the notice, but it also serves this purpose: It gives warning to others that somebody has got the intention of utilizing that water; in other words, it serves as a warning.

Weil, Section 374.

So that the part which the Tripp and Mulligan

notice play in establishing whether or not the parties have a water right is that they may be taken as evidence of intent.

So far as intent is concerned, I can attach no importance to the testimony that as long ago as ten years previous to August 1, 1910, the plaintiffs had determined that they would some day [1470—1320] build a mill on the shores of Gastineau Channel and would immediately need and use the waters of Gold Creek—and that that was the best way to work the ore bodies belonging to plaintiffs—plaintiff may have thought so—may have determined some day to carry out that plan. It is sufficient to say that if such was their plan and determination, for ten long years they kept all knowledge of it securely locked in their own breasts—neither stating it publicly, nor taking any outward visible steps to harness the waters of Gold Creek for the execution of their ultimate plan—they must have known during all those years that the waters of Gold Creek were liable to be appropriated by others to the full extent of the flow. Neither can I attach any importance to the testimony that prior to August 1st plaintiffs had secured a large number of claims over which they intended to lay out a flume line. It was not necessary that a person should actually own the land over which he wishes to lay a flume to convey water; and ground is taken up as a mining claim on the theory presumptively and primarily that, a discovery of gold having been made, it will justify the expenditure of time and money in further exploitation. So that I cannot see that the intent on the

part of plaintiffs was manifested at an earlier date than the date of the Mulligan notice—August 1, 1910. But defendants had manifested intent by the Tripp notice of June 20, 1910. Thus it appears that the defendants were prior in point of time in manifesting their intent. Defendants thus took the first step in notifying the world of the intent to appropriate—they took the first step to warn others to keep off. They were what is called the first comers.

But intent alone is not sufficient, it must be followed by diligence to appropriate and intent and appropriation are not sufficient—that must in turn be followed by beneficial use.

In view of the fact that there is no statute, and that neither side complied with any rules (at least until the rules had lost their efficacy, (if any they ever had) by reason of the fact that [1471—1321] before such compliance the adversary had actually begun work), how have not the defendants the prior right if they first manifested intent—first posted notice—first claimed—were first comers, and proceeded with diligence to appropriate and then with diligence to apply to a beneficial use? I think the manifesting of such intent is usually the first step to locate a mine or appropriate water, in a mining country.

The notice is a palpable and unequivocal outward sign of the intent to appropriate. In *Kimball vs. Gearhart*, 12 Cal., at page 49, the Court say:

“Thus is put in issue the very question of title, and this involves necessarily the due

prosecution of the work after the appropriation, or, in other words, after the indication by some palpable and unequivocal outward sign of the intent to appropriate. The title to the water does not arise, as we have intimated before, from the manifestation of a purpose to take, but from the effectual prosecution of that purpose. This prosecution, therefore, is a necessary element of a title."

—and on page 316:

"The right to the water does not *yet exist*, and *it may never vest*. The most that is *in esse*, is, a right to acquire, by reasonable diligence, a future right to the water."

This case does not seem to depend upon any statute or specially invoked rule. It is the law of appropriation. It is true that law was based on Miner's Rules, but those rules and customs in that regard were and are so well known that they are what might be termed the Common Law of Waters. They were the outgrowth of usage and are the foundation of the law of mines and of waters on the public domain.

First adopted in California, that usage and custom has spread to all the Western States. It has spread to this Northern country.

That is the law of Alaska, irrespective of the rules of the Harris Mining District.

McFarland vs. Perseverance, 3 Alaska, 336.

If, after posting notice, work to appropriate be conducted with diligence and the application to a beneficial use be conducted [1472—1322] with

diligence, the ultimate actual appropriation will relate back to the notice—not because it is a piece of paper tacked to a stump—not because some statute or special rule so provides, but because it is the first step to appropriate and the actual appropriation will relate back to the first step.

Ophir Silver Mining Co. vs. Carpenter, 4 Nev. 936;

Kimball vs. Gearhart, 12 Cal. 27;

Canal Co. vs. Kidd, 37 Cal. 282;

McKinny vs. Smith, 21 Cal. 381;

Osgood vs. Eldorado Water Co., 56 Cal. 578;

Sieber vs. Frink, 2 Pa. R. 901.

It is true that the statutes in many States expressly provide that the first step is the posting and recording of a notice. Such statutes are but a crystallization of miners' rules. The fact recognizes that the posting of notice is a step. It was a step before any statute was enacted. If it preceded any other step, then it was the first step.

I find that the Tripp notice was the first step taken by any one.

A little after one month from taking this first step arrangements were made with surveyors and early in August the flume line was surveyed and work on the flume begun, and I am unable to find any lack of diligence in prosecuting the work of appropriating the water and of applying it to a beneficial use.

It seems to me, then, that the evidence on this application, does not show the right of plaintiff to be clear or probable. A fuller hearing may lead to the

opposite conclusion. If parties will get the case to issue I will try same at the earliest possible moment.

The application for an injunction *pendente lite* is denied. [1473—1323]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal JOHN B. MARSHALL, who, having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of John B. Marshall, for Plaintiff
(Recalled in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Marshall, referring again to the exhibit that you prepared, I neglected to ask you whether you found any notices that were not dated at all?

A. Yes, sir.

Q. That didn't indicate where the water right was located? A. Yes, sir.

Q. How many notices did you find among all the notices examined by you that did not indicate the dates when the water right was located?

A. Fourteen.

Q. And as to those 14, you cannot tell what the period was between the date of location and the date of recording? A. No, sir.

Q. All the others were notices containing the date of location as shown in the exhibit? A. Yes.

Mr. HELLENTHAL.—That is all.

(Testimony of John B. Marshall.)

Cross-examination.

(By Judge WINN.)

Q. You left out quite a number of John Treadwell's location notices from that list, did you not, Mr. Marshall?

A. No; not in the Harris Mining District, I don't believe. [1474—1324]

Q. Are you sure of that?

A. As I gave this testimony before, I am not absolutely sure of it, but I don't think there are any left out.

Q. Salmon Creek is in this district and Douglas Island? A. Yes, sir.

Q. How long were you in going through this list, in checking it up to see whether you were correct or not? A. It took me about a week.

Q. Was that part of your official business?

A. No, sir.

Q. And you did it at the request of Mr. Hellen-thal? A. Yes, sir.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [1475—1325]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rebuttal F. W. BRADLEY, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. W. Bradley, for Plaintiff (Recalled
in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You have already been sworn, Mr. Bradley?

A. Yes.

Q. Do you know where the Ebner mine is?

A. Yes.

Q. Do you know William M. Ebner? A. Yes.

Q. Do you know what property is connected with
the Ebner mine? A. Yes.

Q. Who was the owner of this mining property in
the year 1910 and for several years prior to that?

A. Ebner Gold Mining Company.

Q. Who was the president of that company?

A. Mr. Ebner.

Q. And who was the secretary?

A. Mr. Behrends.

Q. Did you, as President of the Alaska-Juneau
Gold Mining Company, have any negotiations with
the Ebner Gold Mining Company looking towards
the purchase of the Ebner mine by the Alaska-
Juneau Gold Mining Company?

A. Yes; through Mr. McDonald, General Superin-
tendent of the Treadwell and the Alaska-Juneau.

Q. In that connection—before I ask you anything
further, Mr. Bradley, do you know Joseph Mc-
Donald? A. I do. [1476—1326]

Q. Who did he represent for some years in this
country?

A. He was general superintendent of the Alaska-

(Testimony of F. W. Bradley.)

Treadwell and the Alaska-Juneau Gold Mining Company.

Q. I wish you would relate to the Court what negotiations were had between the Alaska-Juneau Gold Mining Company and the Ebner Gold Mining Company prior to 1910 in connection with the purchase of the Ebner mine by the Alaska-Juneau Company—just start from the beginning—what was first done?

Judge WINN.—I object to it as incompetent, irrelevant and immaterial; not rebuttal testimony, and too remote from the time of the inception of any rights in this case, to affect any of the issues as framed under the pleadings in this case.

The COURT.—Fix the time.

Q. When was that, Mr. Bradley?

A. That was in 1902.

The COURT.—Objection overruled.

Q. When the negotiations commenced?

A. Yes.

Q. Now, in a general way, state what was done in connection with those negotiations, without going into details of the negotiations themselves.

Judge WINN.—Did these negotiations terminate in any sort of a written contract, Mr. Bradley?

A. No.

Judge WINN.—With whom did you have the negotiations—I didn't understand you to say?

A. Originally through Mr. McDonald with Mr. Ebner and Mr. Behrends, and finally between Mr. Ebner and myself.

(Testimony of F. W. Bradley.)

Judge WINN.—Then your Honor, I ask that the witness be confined to whatever negotiations were had between him and Mr. Ebner and not what happened between Mr. McDonald and somebody else, because he says it is not in writing. [1477—1327]

The WITNESS.—That was in writing.

Judge WINN.—If it is in writing I demand that they produce the writing, if your Honor please.

The COURT.—Objection overruled.

A. The negotiations at this end were handled by Joseph McDonald with Mr. Ebner or Mr. Behrends and resulted in McDonald's sending me a written communication from the Ebner Gold Mining Company signed—

Judge WINN.—I object to any testimony, if your Honor please, as to what communication took place with Mr. McDonald.

The COURT.—Objection overruled.

A. This written communication was signed by the Ebner Gold Mining Company by Ebner, President, and Behrends, Secretary; this was followed up—

Q. Just before you go any further, Mr. Bradley—that communication was forwarded to you at San Francisco? A. Yes.

Q. I hand you here a paper which has been marked for identification Plaintiff's Exhibit No. 38, and ask you to look at it and see if you recognize that paper?

A. I have already looked through the paper, yes; to the best of my recollection it is a copy of the paper that was sent me at San Francisco.

Q. By Mr. McDonald? A. By Mr. McDonald.

(Testimony of F. W. Bradley.)

Q. What became of the original?

A. Destroyed in the fire of 1906.

Q. In San Francisco? A. At San Francisco.

Q. And this is a copy of that paper?

A. To the best of my recollection.

Mr. HELLENTHAL.—I now offer this in evidence—it is the paper marked for identification Plaintiff's Exhibit No. 38. [1478—1328]

Judge WINN.—We object to it, if your Honor please; this seems to be a typewritten copy, signed on the typewriter, and no signatures to it have been identified by Mr. Bradley; Mr. Bradley has not sworn it was a copy of any original paper, and they show Mr. Ebner's name on it as President of the Ebner Gold Mining Company, and an attestation by Mr. Behrends, Secretary; there is no foundation laid for the introduction of any such paper; it is something he says is a copy of something Mr. McDonald sent him; and besides that, your Honor, I am somewhat acquainted with the contents of it from what Mr. Ebner related the other day—it is a paper writing which Mr. Ebner has already testified that he had nothing in the world to do with, that he never signed any such paper; this is not an original; it is marked for identification and therefore is identified as that paper; it is incompetent, irrelevant and immaterial, and not supporting any of the issues in this case.

The COURT.—The defect is simply this, that Mr. Bradley hasn't yet sworn that the original was signed by Mr. Ebner or the Ebner Gold Mining Company; that he knows their signature and that

(Testimony of F. W. Bradley.)

the original was signed by them; if he can identify them that way, of course, the copy would be admissible if he knows the original cannot be produced.

Q. The original of this document, Mr. Bradley, to the best of your recollection, how was that signed, and by whom?

A. It was signed by Mr. Ebner as President, and by Mr. Behrends as Secretary, of the Ebner Gold Mining Company.

Q. Now, following the receipt of this document, did you see Mr. Ebner?

A. Yes; Mr. Ebner called on me in San Francisco, in the winter of 1902 and '3.

Q. In 1902 and '3? A. Yes. [1479—1329]

Q. Prior to Mr. Ebner's arrival, had you received this paper, the original paper, of which the paper now handed you is a copy? A. I did.

Q. What, if anything, did you do in going over the matters stated in the statement or report with Mr. Ebner?

A. I had it before me at my office, and my interview with Mr. Ebner was at the Occidental Hotel. Mr. Ebner had a great many maps and papers with him that he didn't want to take from his room, and I went down there and had my talk and meeting with Mr. Ebner; it didn't take place at my office where any papers I might have had were at that time.

Q. Was Mr. Ebner at your office prior to this meeting? A. He called on me there.

Q. And this paper was before you at that time?

A. Yes.

